INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

ANNUAL REPORT

2000

THE HONORABLE FRANK O'BANNON
Governor of the State of Indiana

Members of the General Assembly

The Indiana Education Employment Relations Board presents its 28th annual report.

This report covers all official transactions of the agency under Public Law 217, Acts of 1973, as amended, for the calendar year 2000.

Dennis P. Neary, Chairman

John E. Lillich, Member

William E. Wendling, Jr., Member

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ADMINISTRATIVE OPERATIONS

Dennis P. Neary, Chairman
Maureen R. Johnson, Administrative Assistant
Tammie E. Welker, Accountant
Secretary

DIVISION OF EDUCATION EMPLOYMENT RELATIONS

Donald G. Russell, Director
Ivan Floyd, Labor Relations Specialist
Janet L. Land, Labor Relations Specialist
Vicki E. Martin, Labor Relations Specialist
Joseph A. Ransel, Jr., Labor Relations Specialist
MaryAnn Stuart, Secretary

DIVISION OF RESEARCH

Joseph A. Ransel, Jr., Director
Jackqualine J. Fenton, Secretary
Intern

BOARD MEETING

DATE: Friday, July 16, 1999
TIME: 10:00 a.m.
PLACE: Indiana Government Center North, 100 North Senate Avenue, Room N 1045
Indianapolis, Indiana 46204-2220

MINUTES

Chairman Dennis P. Neary called the meeting to order at 10:10 a.m. Board Members William E. Wendling, Jr. and John E. Lillich were present.

Court Reporter Helen Batuello was sworn in as the official reporter by Chairman Neary.

Member Lillich made a motion to approve the minutes of the meeting of June 22, 1999, as written. Member Wendling seconded the motion. The minutes were approved by the members.

IEERB staff member Kenneth E. Hatch presented the following update on the litigation cases that are on appeal:

Levee v. South Bend:	No changes	[IEERB Case No. U-97-01-7205]
Crawfordsville CSC:	No changes	[Refusal to discuss drug policy and interference with school employees in their 6(a) rights. IEERB Case No. U-97-35-5855.]

IEERB Staff Member Joseph A. Ransel, Jr., gave the following contract settlement report: Of the 276 contracts analyzed, the salary average for 1998-99 is 3.48% without increment and 6.24% with increment. There remain 15 unsettled districts for 1998-99. The total number of settlements for 1999-00 is 63, leaving 243 unsettled. Of the 40 contracts received by IEERB, the average without increment is 3.42%; 6.21% with increment.

Chairman Neary announced the next date for a meeting is September 15, 1999. No one wished to address the Board.

The next item on the agenda was Case No. U-99-14-5995, **South Newton Classroom Teachers Association, et al., Complainants, and Board of School Trustees of the South Newton School Corporation, Respondent**. The Complainants were represented by Richard Darko and Eric Hylton, LOWE GRAY STEELE & DARKO. The Respondent was represented

by Michael Wallman, RUND & WUNSCH. Both counsel presented the final arguments of the case to the full IEERB Board.

After hearing oral arguments, the Board Members discussed the case. Chairman Neary made the following motion:

1. The Indiana Education Employment Relations Board does have jurisdiction on this matter.

2. The Board did hear testimony from both the school board and the exclusive representative attorneys.

3. The Board dismisses the unfair labor claim on the grounds that no improper action was made by the school board.

4. The Board highly recommends if students days are waived again next year that discussion concerning the issues of make-up days for teachers take place as soon as the state grants them; that the discussion be meaningful and swift so this problem of summer time does not arise again.

5. The Board recognizes that this issue will probably be an issue in future contracts and that both parties need to evaluate their positions on this subject.

Member Wendling seconded the motion. A vote was taken, Chairman Neary and Member Wendling approved the motion, Member Lillich dissented. The motion passed 2-1.

After further discussion, Member Lillich made the following motion: We recommend to the parties that they be strongly encouraged to work together as soon as possible to participate in collective bargaining training to learn how to work together more cooperatively as a school corporation, teachers, and teacher representatives, for the good of the system.

Member Wendling seconded the motion. A vote was taken and the motion passed unanimously.

There being no further business, Member Lillich made a motion to adjourn the meeting. Member Wendling seconded the motion. Chairman Neary adjourned the meeting at 11:35 a.m.

Dennis P. Neary, Chairman

IEERB BOARD MEETING

DATE: MARCH 21, 2000
TIME: 10:30 a.m. PLEASE NOTE TIME
PLACE: Indiana Government Center North, IEERB Board Room N 1045,
100 North Senate Avenue
Indianapolis, Indiana 46204-2220

AGENDA

1. Approval of minutes of July 16, 1999, meeting.

2. Report of the Director of Research on the 1998-99 and 1999-00 negotiated settlement progress and state average.

3. Report of IEERB Staff member on litigation.

4. New business.
   Interest Based Bargaining

5. Public comment.

6. Adjournment.

BOARD MEETING

DATE: Tuesday, March 21, 2000
TIME: 10:30 a.m.
PLACE: Indiana Government Center North, 100 North Senate Avenue, Room N 1045
Indianapolis, Indiana 46204-2220

MINUTES

Chairman Dennis P. Neary called the meeting to order at 10:35 a.m. Board Members William E. Wendling, Jr. and John E. Lillich were present.

There being no cases before the Board on this date, no court reporter was present. It was noted that Maureen Johnson, Administrative Assistant, was taking notes and taping the meeting.

Member Lillich made a motion to approve the minutes of the meeting of July 16, 1999, as written. Member Wendling seconded the motion. The minutes were approved by the members.

IEERB Director Donald G. Russell presented the following update on the litigation cases that are on appeal:

Crawfordsville CSC:

In December, 1999, the Plaintiff's filed a brief in reply to the School Corporation's brief in response to Petition for Judicial Review. [Refusal to discuss drug policy and interference with school employees in their 6(a) rights. IEERB Case No. U-97-35-5855.]

Levee v. South Bend:

This matter is now in the Appellate Court. Briefs have been filed. Levee requested oral argument, still awaiting answer. Nothing to happen until April. In January, 2000, the case was sent fully briefed to Court of Appeals. In February, Appellant's Submission of additional authority filed; no request for oral argument. [IEERB Case No. U-97-01-7205.]

South Newton SC:

In October, 1999, the CTA filed Petition for Judicial Review. The record was prepared and filed December, 1999. A summons was served upon IEERB in January, 2000. In March, the Attorney General filed an answer for IEERB (standard disclaimer of interest by IEERB). [Make-up of waived student days. IEERB case No. U-99-14-5995.]

Marion CSC: **IEERB IS NOT A PARTY IN THIS CASE.**

Grant Circuit Court dismissed complaint for lack of jurisdiction, based on teachers' failure to exhaust administrative remedies [IEERB]. Court of Appeals reversed and remanded case to Trial Court in December, 1999. In January, 2000, Appellees filed joint request for transfer and brief in support. Response filed. February, case goes to Supreme Court for School to decide if it will grant transfer. Petition to Transfer filed February, 2000, sent to Supreme Court. [Teachers sued for breach of duty of fair representation and sued School for breach of contract. Change in early retirement package.]

IEERB Director Joseph A. Ransel, Jr., gave the following contract settlement reports: For 1998-99, there remains one unsettled district, Caston School Corporation. The total number of settlements for 1999-00 is 234, leaving 72 unsettled. Of the 206 contracts received by IEERB, the average without increment is 3.47%; 6.20% with increment. Mr. Ransel also announced there are currently 88 multi-year contracts for the 2000-01 year, compared to the 71 total multiyear agreements for 1999-00. Mr. Ransel expects to see more multi-year agreements forthcoming.

Member Lillich inquired about mediation cases, specifically, are the number of cases

more or less than in the past recent years? Director Russell indicated the numbers are lower this year than last year. Chairman Neary indicated there are fewer cases, but the issues are more complex. There was discussion concerning the parties' acceptance of the law, thereby reducing the number of all types of cases filed with IEERB.

Next on the agenda was a report about IEERB's role as trainers of interest-based bargaining programs to interested parties from IEERB Staff Member Janet Land. Three school corporations have participated in this training, and were very receptive to the ideas presented. There is currently one training scheduled for the end of April, 2000. IEERB has met with representatives of Indiana State Teachers Association, Indiana Federation of Teachers, Indiana School Board Association, and the Indiana Association of Public School Superintendents to introduce the program to the parties. There are two criteria that must be met prior to IEERB's involvement: the parties must ask IEERB to provide this training; and both parties involved must request this training. The Federal Mediation and Conciliation Service is holding a conference in Chicago in April. IEERB staff is attending to find more information on how to obtain grant monies and use these monies to train IEERB's ad hoc staff to assist facilitation of the training program. Currently, IEERB staff members Janet Land, Vicki Martin, Donald Russell, Dennis Neary, and ad hoc staff member Kenneth I-latch are trained to present the program to interested, parties.

Chairman Neary announced the next date for a meeting is tentatively set for July 11, 2000, at 10:30 a.m.

There being no further business, Member Wendling moved to adjourn the meeting, seconded by Member Lillich. The meeting adjourned at 11:00 a.m.

Dennis P. Neary, Chairman

IEERB BOARD MEETING

DATE: JULY 11, 2000
TIME: 10:30 a.m. PLEASE NOTE TIME
PLACE: Indiana Government Center North, IEERB Board Room N 1045,
100 North Senate Avenue,
Indianapolis, Indiana 46204-2220

AGENDA

1. Approval of minutes of March 21, 2000, meeting.

2. Report of the Director of Research on the 1999-00 negotiated settlement progress and state average.

3. Report of IEERB Staff member on litigation. 4. New business.

5. Public comment.

6. Consideration of Objection to the Conduct of Election in Case No. R-00-01-5835, NORTH MONTGOMERY EDUCATION ASSOCIATION, AND NORTH MONTGOMERY TEACHERS ASSOCIATION, and NORTH MONTGOMERY COMMUNITY SCHOOL CORPORATION.

7. Consideration of Exceptions to Hearing Examiner's Report in Case No. U-98-02-1910, CHRIS GOODWIN and BOARD OF SCHOOL TRUSTEES OF THE MOUNT PLEASANT TOWNSHIP COMMUNITY SCHOOL CORPORATION.

8. Adjournment.

IEERB BOARD MEETING

RESCHEDULED
The IEERB Board meeting which was originally to be held on July 11, 2000, has been rescheduled. That Board meeting will now be held as follows:

DATE: JULY 19, 2000
TIME: 10:30 a.m. PLEASE NOTE TIME
PLACE: Indiana Government Center North, IEERB Board Room N 1045
100 North Senate Avenue
Indianapolis, Indiana 46204-2220

AGENDA

1. Approval of minutes of March 21, 2000, meeting.

2. Report of the Director of Research on the 1999-00 negotiated settlement progress and state average.

3. Report of IEERB Staff member on litigation.

4. New business.

5. Public comment.

6. Consideration of Objection to the Conduct of Election in Case No. R-00-01-5835, NORTH MONTGOMERY EDUCATION ASSOCIATION, AND NORTH MONTGOMERY TEACHERS ASSOCIATION, and NORTH MONTGOMERY COMMUNITY SCHOOL CORPORATION.

7. Consideration of Exceptions to Hearing Examiner's Report in Case No. U-98-02-1910, CHRIS GOODWIN and BOARD OF SCHOOL TRUSTEES OF THE MOUNT PLEASANT TOWNSHIP COMMUNITY SCHOOL CORPORATION.

8. Adjournment.

BOARD MEETING

DATE: Wednesday, July 19, 2000
TIME: 10:30 a.m.
PLACE: Indiana Government Center North, 100 North Senate Avenue, Room N 1045
Indianapolis, Indiana 46204-2220

MINUTES

Chairman Dennis P. Neary called the meeting to order at 10:45 a.m. Board Members William E. Wendling, Jr. and John E. Lillich were present. The official court reporter, Helen Batuello, was sworn in as the reporter for this meeting.

Member Lillich made a motion to approve the minutes of the meeting of March 21, 2000, as written. Member Wendling seconded the motion. The minutes were approved by the members.

IEERB Director Joseph A. Ransel, Jr., gave the following contract settlement reports: The total number of settlements for 1999-00 is 278, leaving 28 unsettled. Of the 249 contracts received by IEERB, the average without increment is 3.50%. Mr. Ransel also announced there are currently 122 settlements for the 2000-01 year, leaving 184 unsettled. Of the 96 contracts received by IEERB, the average without increment is 3.47%.

IEERB Staff Member Ivan Floyd presented the following update on the litigation cases that are on appeal:

Levee v. South Bend

This matter is now in the Appellate Court. Briefs have been filed. Levee requested oral argument, still awaiting answer. Nothing to happen until April. In January, 2000, the case was sent fully briefed to Court of Appeals. In February, Appellant's Submission of additional authority filed; no request for oral argument. In March, the Attorney General filed a standard disclaimer of interest by IEERB as administrative agency. A pre-hearing conference was held. Teachers filed pre-hearing brief in May, 2000. [IEERB Case No. U-97-01-7205.]

Marion CSC **IEERB IS NOT A PARTY IN THIS CASE.**

Grant Circuit Court dismissed complaint for lack of jurisdiction, based on teachers' failure to exhaust administrative remedies [IEERB]. Court of Appeals reversed and remanded case to Trial Court in December, 1999. In January, 2000, Appellees filed joint request for transfer and brief in support. Response filed. February, case goes to Supreme Court for School to decide if it will grant transfer. Petition to Transfer filed February, 2000, sent to Supreme Court. IEERB filed Amicus Curiae brief on June 29, 2000. Parties did not respond. [Teachers sued for breach of duty of fair representation and sued School for breach of contract. Change in early retirement package.]

Chairman Neary announced the recent retirement of IEERB Director, Donald G. Russell. Chairman Neary announced the next tentative Board meeting would be Wednesday, October 18, 2000; however, there is currently nothing scheduled for that meeting.

The first case before the IEERB Board is an Objection to the Conduct of Election, NORTH MONTGOMERY EDUCATION ASSOCIATION and NORTH MONTGOMERY TEACHERS ASSOCIATION AND NORTH MONTGOMERY COMMUNITY SCHOOL CORPORATION, Case No. R-00-01 -5835. Election Officer Vicki Martin presented the Board with a Report and Recommendation to the Board, which detailed the history of the representation election and the request for a rerun due to a flawed runoff election. Member Lillich made a motion to order a rerun election, seconded by Member Wendling. The Board, having considered the report and its recommendation, and having the agreement of the parties involved, ordered the Election Officer to conduct a rerun election in early fall of 2000.

Next, the Board considered the Exceptions to Hearing Examiner's Report in CHRIS L. GOODWIN and BOARD OF SCHOOL TRUSTEES OF THE MOUNT PLEASANT TOWNSHIP COMMUNITY SCHOOL CORPORATION, Case No. U-98-02-1910. William Diehl, GAGNON DIEHL & SPILKER, represented Mr. Goodwin; Karen Glasser Sharp, BOSE MCKINNEY & EVANS, represented the School Corporation. Member Wendling disclosed he is currently working with the law firm of Bose McKinney and Evans in an unrelated issue, a real estate deal, and wanted to see if the parties wanted him to be dismissed from the proceedings. Neither party had an objection to

Member Wendling's involvement in the case before the IEERB Board. Both parties presented their oral arguments. Mr. Diehl requested the Board strike irrelevant and illogical speculations in the Report, admitting the information had no bearing on the final result of the Hearing Examiner's Report. Mrs. Sharp questioned why the parties were before IEERB, as there were no challenges to the conclusion and/or recommendation of the Hearing Examiner's Report. Member Wendling made a motion to accept the Hearing Examiner's Report as written, Member Lillich seconded the motion. The motion carried unanimously.

There being no further business, the meeting adjourned at 11:25 a.m.

Dennis P. Neary, Chairman

IEERB BOARD MEETING

DATE: Tuesday, December 12, 2000
TIME: 10:30 a.m.
PLACE: Indiana Government Center North IEERB Board Room N 1045,
100 North Senate Avenue,
Indianapolis, Indiana 46204-2220

AGENDA

1. Approval of minutes of July 19, 2000, meeting.

2. Report of the Director of Research on the 2000-01 negotiated settlement progress and state average and the final settlement report for 1999-00.

3. Report of IEERB Staff member on litigation.

4. New business.

5. Public comment.

INTEREST-BASED COLLECTIVE BARGAINING

The Indiana Education Employment Relations Board ["IEERB"] ventured into interest-based bargaining training approximately four years ago at the joint request of a school employee organization and the school employer. After consulting with the Federal Mediation and Conciliation Service ["FMCS"], we outlined and executed our first training program. Since that time we have held training sessions at Fayette County (Connersville), Gary, Garrett-Keyser-Butler, DeKalb Central, and DeKalb Eastern.

Interest-based bargaining, referred to as IBB, has been a successful alternative to traditional bargaining in the private sector for several years and in the public sector for the past few years. IBB is also known as "win-win" bargaining, collaborative bargaining, or consensus bargaining. IBB is the brain child of Dr. Jerome T. Barrett and a favorite child of the FMCS.[1] IBB embraces the P.A.S.T. model for win-win bargaining. P.A.S.T. is an acronym for principles, assumptions, steps, and techniques.

Principles

- ➜ Focus on issues, not on personalities.
- ➜ Focus on interests, not on positions.
- ➜ Seek mutual gain.
- ➜ Use a fair method to determine outcome.

Assumptions

- ➜ Bargaining enhances the parties' relationship.
- ➜ Both parties can win in bargaining.
- ➜ Parties should help each other win.
- ➜ Open and frank discussion and information sharing expands the areas of mutual **interests**, and this in turn expands the **options** available to the parties.
- ➜ Mutually developed **standards** for evaluating **options** can move decision making away from reliance on power.

Steps

- ➜ Pre-Bargaining Steps:
  - Prepare for bargaining.
  - Develop opening statements.
- ➜ Bargaining Steps:

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[1] Dr. Barrett has worked for the National Labor Relations Board, the U. S. Department of Labor, and the American Arbitration Association. In 1989 he developed the P.A.S.T. model of win-win bargaining and a training program to help labor and management negotiators use the model. He has trained several FMCS mediators and others on how to conduct that training and facilitate interest-based negotiations.

- Agree on a list of **issues**.
- Identify **interests** on one **issue**.
- Develop **options** on one **issue**.
- Create acceptable **standards**.
- Test **options** with **standards** to achieve a **solution** or **settlement**.

Techniques

➜ Idea Charting
➜ Brainstorming
➜ Consensus Decision Making

Prior to any IBB training, IEERB representatives meet with the parties to determine interest and commitment. Preferably, the meeting occurs in an informal setting such as a restaurant for lunch or after school snack. If the parties wish to pursue IBB training, they must set aside the equivalent of two days. The only expenditures are those of facility, food, drink, and a few supplies. The agenda includes instruction in active listening skills, videos, communication exercises, traditional versus non-traditional bargaining styles, P.A.S.T. bargaining steps with exercises, consensus building and brainstorming exercises, and a simulation exercise utilizing the IBB approach to bargaining.

The IEERB emphasizes that IBB negotiations are not intended to replace traditional bargaining. Instead, IBB is an alternative approach to traditional collective bargaining. The IEERB recognizes that many school employee organizations and school employers are already using parts of IBB. In fact, many of the IBB techniques can be applied to traditional bargaining, other types of negotiations, and group decision-making endeavors. IBB is another service the IEERB provides to schools and their school employees to promote harmony in the collective bargaining process.

UNIT DETERMINATION AND REPRESENTATION

Five unit determination and representation cases were filed with the IEERB during the calendar year 2000.

The IEERB conducted one election to determine which school employee organization the teachers preferred to be their exclusive representative for purposes of collective bargaining and discussion. The results of this election were as follows:

School Corporation	Certified Exclusive Representative	Date Certified
North Montgomery	North Montgomery Teachers' Association	10-30-00

UNIT DETERMINATION AND REPRESENTATION TABLE

SCHOOL CORPORATION	CASE NUMBER	COUNTY	DISPOSITION
2000 UNIT DETERMINATION AND REPRESENTATION CASES			
1. East Chicago	R-00-03-4670	Lake	Unit Clarification/Withdrawn
2. Fayette County	R-00-02-2395	Fayette	Unit Clarification/Acknowledgment
3. Mt. Pleasant	R-00-04-1910	Delaware	Unit Clarification & Representation/Acknowledgment
4. North Montgomery	R-00-01-5835	Montgomery	Election/Rep Certified
5. Northeastern Wayne	R-00-05-8375	Wayne	Unit Amendment/Decision

BEFORE THE INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

FAYETTE COUNTY FEDERATION OF TEACHERS, School Employee Organization,	)	
and	)	Case No. R-00-02-2395
FAYETTE COUNTY SCHOOL CORPORATION, School Employer.	)	

ORDER ACKNOWLEDGING CLARIFICATION OF THE BARGAINING UNIT

During the parties' negotiations on the 2000 collective bargaining agreement, the Fayette County Federation of Teachers ("Federation") and the Fayette County School Corporation ("School Corporation") agreed to clarify the composition of the school employees' bargaining unit. The Federation and the School Corporation agreed that the following position would be removed from the bargaining unit: Head Basketball Coach. Additionally, the parties agreed that the following two positions would be added to the unit: Head Basketball Coach (Boys) and Head Basketball Coach (Girls). In other words, the girl's Head Basketball Coach will now also be excluded from the unit just as the boy's Head Basketball Coach has been so excluded for years. The clarified bargaining unit is composed of:

> **The term "teacher" or "employee" when used in this agreement shall refer to all certified employees as defined in I.C. 20-7.5-1 except for: Superintendent, Assistant Superintendent for Instruction, Assistant Superintendent for Business/Business Manager, Administrative Assistant, Director of Special Education, Director of Vocational Education, Principals, Assistant Principals, Assistant Directors, Coordinator of Secondary Athletics, Head Basketball Coach (Boys), Head Basketball Coach (Girls), Head Football Coach, Curriculum Director, and Administrative Assistant-Student Services. Teachers employed for less than the number of hours and days specified in ARTICLES VI, E, 1 and VI, F, 1 shall receive all benefits and salary on a prorated basis. Leaves, if and when granted under the conditions of that specific leave, shall be prorated to the nearest half day.**

The Federation and the School Corporation posted notice of the proposed change in the bargaining unit for thirty days during which no school employee filed a complaint concerning the proposed composition of the bargaining unit.

The Federation and the School Corporation have complied with the procedures set forth in Indiana Code 20-7.5-1-10(a) and 560 Indiana Administrative Code2-2-1(c). Therefore, the Indiana Education Employment Relations Board now acknowledges this particular clarification of the school employees' bargaining unit.

Dated this 17th day of April, 2000.

Ivan Floyd, Hearing Officer

BEFORE THE INDIANA EDUCATION
EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

MOUNT PLEASANT TEACHERS ORGANIZATION,	)	
School Employee Organization,	)	
and	)	Case No. R-00-04-1910
BOARD OF SCHOOL TRUSTEES OF THE MOUNT PLEASANT TOWNSHIP COMMUNITY SCHOOL CORPORATION,	)	
School Employer.	)	

ORDER CERTIFYING THE EXCLUSIVE REPRESENTATIVE
AND ACKNOWLEDGING THE COMPOSITION OF THE BARGAINING UNIT

The Mount Pleasant Teachers Organization ("Teachers Organization") is a newly-formed school employee organization, which is an affiliate of the Indiana State Teachers Association and the National Education Association. This new school employee organization is and will be composed of school employees many of whom were previously members of either the Yorktown Professional Educators or the Yorktown Classroom Teachers Association.

On June 13, 2000, the Teachers Organization presented evidence to the Board of School Trustees of the Mount Pleasant Township Community School Corporation ("School Corporation") which demonstrated that the Teachers Organization represented a majority of the School Corporation's school employees. The School Corporation then voted to post in each of its school buildings for thirty days a notice of its intent to recognize the Teachers Organization to serve as its school employees' exclusive representative.

During the thirty-day period that the notice was posted no other school employee organization filed written objections to such recognition with the School Corporation or with the Indiana Education Employment Relations Board ("Board"). Finally, on July 18, 2000, the School Corporation, pursuant to Indiana Code 20-7.5-1-10(b) and 560 Indiana Administrative Code 2-2-2, voted to recognize the Teachers Organization as the exclusive representative of its school employees.

Pursuant to Indiana Code 20-7.5-1-10(a)(1) and 560 Indiana Administrative Code 2-2-1(a), the Teachers Organization and the School Corporation agreed that the bargaining unit would be composed of:

> All certified personnel of the Mount Pleasant Township Community School Corporation except the positions of Superintendent, Assistant Superintendent, Principals, Assistant Principals, Directors (Athletic, Curriculum, etc.), Deans of Students, Psychologists and Case Conference Coordinators.

No school employee filed a complaint concerning the composition of the bargaining unit with either the School Corporation or the Board pursuant to Indiana Code 20-7.5-1-10(a)(2) and (b) and pursuant to 560 Indiana Administrative Code 2-2-1(b).

The Teachers Organization and the School Corporation have complied with the provisions set forth in Indiana Code 20-7.5-1-10 and in 560 Indiana Administrative Code 2-2-1 and 2. Therefore, the Board hereby certifies the Teachers Organization as the exclusive representative of the above-described bargaining unit.

Dated this 13th day of October, 2000.

Dennis P. Neary, Chairman

BEFORE THE INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

NORTH MONTGOMERY EDUCATION ASSOCIATION,	)	
School Employee Organization,	)	
and	)	Case No. R-00-01-5835
NORTH MONTGOMERY TEACHERS ASSOCIATION,	)	
School Employee Organization,	)	
and	)	
NORTH MONTGOMERY COMMUNITY SCHOOL CORPORATION,	)	
School Employer.	)	

REPORT AND RECOMMENDATION TO THE BOARD

The undersigned Election Officer was assigned to investigate the NORTH MONTGOMERY EDUCATION ASSOCIATION'S OBJECTION TO CONDUCT OF ELECTION pursuant to 560 IAC 2-2-9 (I) and to make the following Report and Recommendation to the Board.

I. SUMMARY OF OBJECTIONS
II. DISCUSSION
III. RECOMMENDATION

I. SUMMARY OF OBJECTIONS

On February 14, 2000, the North Montgomery Education Association (NMEA) filed a petition challenging the North Montgomery Teachers Association's (MNTA) status as the exclusive

representative of the school employees of the North Montgomery School Corporation. A preelection conference was held on April 12, 2000. As a result, a representation election was conducted by the Indiana Education Employment Relations Board (IEERB) on May 24, 2000. Since the election was inconclusive, resulting in no choice receiving a majority of eligible voters, a runoff election was scheduled pursuant to 560 IAC 2-2-10. The runoff election was conducted on June 2, 2000. The runoff election was also inconclusive.

On June 7, 2000, the Petitioner (NMEA) filed objections to the conduct of the runoff election pursuant to IAC 2-2-9 (I) requesting that the runoff election be declared void and re-scheduled for the fall of 2000 after the teachers return to school. The Petitioner's objections are based on the fact that two temporary contract employees were inadvertently allowed to vote unchallenged in the runoff election. The parties had agreed in the original pre-election conference that the recognition clause in the collective bargaining contract would determine the appropriate unit for the election. At the pre-election conference prior to the runoff election, the parties again agreed that the collective bargaining agreement recognition clause, excluding temporary employees, constituted the appropriate unit. (See ENTRY RE: PRE-ELECTION CONFERENCE, ELECTION ORDER, NOTICE OF ELECTION, NOTICE OF RUNOFF ELECTION, AND NMEA'S OBJECTION TO CONDUCT OF ELECTION)

The parties agreed in both the original election and the runoff election that there were 131 eligible voters with 66 needed in order to win. The two temporary employees were voted as challenged voters in the original election. They were erroneously allowed to vote unchallenged in the runoff election, thereby changing the potential number of voters to 133. The NMEA objects that the inclusion of voters that the parties agreed were ineligible spoils the entire election process and renders the election void.

II. DISCUSSION

The original representation petition was filed on February 14, 2000, and the undersigned (Election Officer) was assigned on February 16, 2000. On April 12, 2000, the Election Officer held a pre-election conference in order to determine the following:

1) the validity of the petition,
2) the appropriate unit, and
3) the procedures for the conduct of the election.

At the conference, the Election Officer determined that a valid question of representation existed and that an election would be ordered. The parties then proceeded to reach agreement as to the appropriate unit (eligible voters) and to the procedures by which the election would be conducted. The attached ENTRY RE: PRE-ELECTION CONFERENCE and ELECTION ORDER issued on May 1, 2000, state that the parties agree to the following unit:

> All certificated employees in the School Corporation except: the superintendent, associate superintendent, principals, full-time assistant principals, athletic director, substitute teachers, and temporary employees.

The parties agreed to accept the above unit, which is the one in the current collective bargaining agreement. The current unit excludes temporary employees.

The parties agreed in the pre-election conference that the school corporation would supply eligibility lists for the parties to review. The lists supplied by the school corporation included the two temporary employees. Per the parties' agreement, these employees were ineligible to vote. The temporary contract teachers, however, questioned the parties' representatives about their ineligibility and expressed interest in voting. Therefore the Election Officer left their names on the list, but highlighted them to be voted challenged. Both the Election Officer and the parties were aware that the status of these employees might become an issue if their votes were necessary in order to determine the outcome of the election. They were not included in the tally of 131 eligible voters. The tally of the original May 24, 2000 election was:

NMTA **60**
NMEA **59**
Challenged (temporary contracts) **2**
No Representation **2**

The parties had agreed that there were 131 eligible voters, with 66 needed to win. The challenged status of the two temporary contract voters was left unresolved since their votes would not have affected the outcome of the election.

Immediately following the tally of votes at the May 24th election, the parties agreed to the procedures for the runoff election to be held pursuant to 560 IAC 2-2-10 on June 2, 2000. The parties agreed to the same unit, sites and rules. The parties did not consider changing the unit to include the temporary employees, since neither party had time to disseminate campaign literature or adequately inform the two voters about their respective organizations. The only two changes were to be the time of the election and an expanded absentee provision in order to encourage maximum turnout. Since June 2, 2000 was a teacher day, rather than a student attendance day, the election was scheduled from 10:00 a.m. to 10:30 a.m. Since the Election Officer was unavailable during the week inclusive of June 2, 2000, Donald Russell (Runoff Election Officer) agreed to conduct the runoff election.

The runoff election was conducted on June 2, 2000. The two temporary voters were to be highlighted and again voted challenged. One name was incorrectly highlighted. The second name was highlighted correctly, but the employee managed to vote before the site officer or the observer noticed she was to be challenged. In retrospect, the undersigned Election Officer should have had the parties agree to remove the names from the list or highlight them in a different color. She should have anticipated the possibility that the expanded mail ballot usage might complicate the process. Both parties were worried that it would be difficult to get a majority and therefore have a winner. Consequently, they mutually encouraged potentially absent teachers to utilize the mail ballot option in the runoff election. As a result there were numerous highlighted names on the lists on the day of the runoff election, thereby increasing the possibility of error. In addition, the Runoff Election Officer had not been a party to the many conversations between the Election Officer and the parties' representatives as to how the

challenged temporary employees would be handled. He was unaware that there were 133 names on the list, although only 131 were eligible to vote.

Due to the error, two ineligible voters voted unchallenged. The inadvertent inclusion of the two temporary contract teachers changed the potential total voter count to 133. With 133 votes, one would need 67 votes to win instead of 66. The tally was 66 for the NMTA and 62 for the NMEA. Because votes are cast secretly, it is impossible to know how the two temporary contract teachers voted. Although it is probable that there would again have been no majority, necessitating a rerun ballot, it is possible to hypothesize one scenario where the error could have affected the outcome of the election. There would have been no majority if any of the following happened:

1) they voted for the NMEA and their votes were included raising the total to 133,
2) they split their votes,
3) they voted for NMTA.

If both had voted for the NMEA, however, and their ballots had been challenged and excluded, the election could have been affected.

III.RECOMMENDATION

Since the outcome could have been affected by the error, the Election Officer recommends that the runoff election held on June 2, 2000 between the NMTA and the NMEA be set aside and a new runoff election be rescheduled at a time agreed to by the parties after the beginning of the 2000/01 school year. This is the course of action requested in the NMEA's objections and the NMTA concurs that this is the appropriate remedy. If the outcome could not have been affected by the error, the Election Officer would have recommended that the IEERB order a rerun election pursuant to 560 IAC 2-2-11.

The election officer further recommends that the parties should have a new pre-election conference after the start of school in order to revise the eligibility lists, determine the appropriate unit, and set new campaign rues and procedures.

Respectfully submitted,

Vicki E. Martin
Election Officer
June 27, 2000

BEFORE THE INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

NORTH MONTGOMERY EDUCATION ASSOCIATION,	)	
School Employee Organization,	)	
and	)	Case No. R-00-01-5835
NORTH MONTGOMERY TEACHERS ASSOCIATION,	)	
School Employee Organization,	)	
and	)	
NORTH MONTGOMERY COMMUNITY SCHOOL CORPORATION,	)	
School Employer.	)	

BOARD ORDER

On or about June 27, 2000, the Election Officer in the above-captioned representation case distributed to each Board Member a written Report concerning a flawed teacher election which was conducted in the North Montgomery Community School Corporation. Having considered that Report during its public meeting on July 19, 2000, the Board now directs the Election Officer to conduct a rerun election on an appropriate date in the early fall of 2000.

Dated this 19th day of July, 2000.

Dennis P. Neary, Chairman

John E. Lillich, Member

William E. Wendling, Jr., Member

BEFORE THE INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

NORTH MONTGOMERY EDUCATION ASSOCIATION,	)	
School Employee Organization,	)	
and	)	Case No. R-00-01-5835
NORTH MONTGOMERY TEACHERS ASSOCIATION,	)	
School Employee Organization,	)	
and	)	
NORTH MONTGOMERY COMMUNITY SCHOOL CORPORATION,	)	
School Employer.	)	

CERTIFICATION OF EXCLUSIVE REPRESENTATIVE

The Indiana Education Employment Relations Board conducted a runoff election on Tuesday, October 17, 2000, in order to determine which party would represent the school employees' bargaining unit for purposes of collective bargaining. The election results reveal that a majority of the school employees cast their votes for the North Montgomery Teachers' Association.

Therefore, for collective bargaining, discussion, and all other purposes under the Certificated Educational Employee Bargaining Act, IC 20-7.5-1 et seq., the Indiana Education Employment Relations Board, in accordance with IC 20-7.5-1-9 and 10, now **CERTIFIES** the

NORTH MONTGOMERY TEACHERS' ASSOCIATION

as the exclusive representative of the school employees of North Montgomery Community School Corporation.

Specifically, the school employees' bargaining unit in the North Montgomery Community School Corporation consists of:

> **UNIT: The bargaining unit consists of all certificated employees of the School Corporation except: superintendent, associate superintendent, principals, full-time assistant principals, athletic director, substitute teachers, and temporary employees.**

Dated this 30th day of October, 2000.

Dennis P. Neary, Chairman

BEFORE THE INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

NORTHEASTERN WAYNE CLASSROOM TEACHERS ASSOCIATION,	)	
School Employee Organization,	)	
and	)	Case No. R-00-05-8375
NORTHEASTERN WAYNE SCHOOL CORPORATION,	)	
School Employer.	)	

UNIT AMENDMENT
HEARING OFFICER'S REPORT

Appearances

For the Northeastern Wayne Classroom Teachers Association:
Gene Emerson, ISTA UniServ Director.

For the Northeastern Wayne School Corporation:
Julie Koschnick, Superintendent.

Upon investigation of the petition herein, the Hearing Officer has determined that the parties agree that the new position ("Assistant Athletic Supervisor") should be in the bargaining unit and, therefore no change should be made to the existing description of the appropriate unit.

RECOMMENDATIONS

The Hearing Officer recommends the following:

(1) That the Assistant Athletic Supervisor position be included in the bargaining unit of school employees represented by the Northeastern Wayne Classroom Teachers Association; and

(2) That no change be made to the existing bargaining unit description.

THE UNIT

The recommended appropriate unit is

All certified personnel employed by the Board, except Central Office Administrators, Building Principals, Assistant Principals, Director of Athletics, Technology Coordinator, and the Director of Guidance Services.

Pursuant to the Rules of the Indiana Education Employment Relations Board, and specifically Rule 560 IAC 2-2-14, this case is transferred to the Indiana Education Employment Relations Board.

Submitted this 23th day of October, 2000.

Joseph A. Ransel, Jr., Hearing Officer

CONCILIATION

There were 306 teacher bargaining units in 2000. Of the 306 units, 146 did not bargain new contracts for the 2000-01 school year because they had reached multi-year agreements in previous year(s). On December 31, 2000, two 1999-00 bargaining tables remained at impasse.

Mediation is generally the first step in the impasse procedure under Public Law 217. If necessary, fact-finding with advisory recommendations may follow mediation. When a fact-finder's written recommendations are submitted to the IEERB, the report is released to the public through the media within ten days if the contract dispute is not resolved. If an impasse remains after completion of the fact-finding process, the IEERB may provide further mediation or fact-finding, as it deems appropriate.

FACT-FINDING

The IEERB no longer prints fact-finding reports in the Annual Report. There were no fact-finding reports issued in 2000.

Copies of fact-finding reports may be obtained at the state-approved charge for copying, through the IEERB, which maintains copies of fact-finding reports in its library.

The IEERB maintains a log of conciliation cases from 1974 through the present. We can furnish to negotiators a list of mediation and fact-finding cases for a particular school corporation or for a particular mediator or fact-finder. Requests for this information should be directed to the IEERB Research Division.

UNFAIR PRACTICE CASES

During the 2000 calendar year, thirteen (13) unfair practice complaints were filed with the IEERB. On December 31, 2000, nine (9) unfair practice complaints were pending, down from sixteen (16) one year ago. Full-time agency staff processed all of the cases.

2000 UNFAIR PRACTICE COMPLAINTS

	SCHOOL CORPORATION	CASE NUMBER	COUNTY	DISPOSITION
1.	Boone Township	U-00-13-6460	Porter	Pending
2.	Crown Point	U-00-08-4660	Lake	Pending
3.	Eastern Greene	U-00-12-2940	Greene	Pending
4.	Goshen	U-00-03-2315	Elkhart	Pending
5.	Greensburg	U-00-10-1730	Decatur	Pending
6	Knox	U-00-09-7525	Starke	Pending
7.	Lafayette	U-00-07-7855	Tippecanoe	Dismissed
8.	Lawrence Township	U-00-05-5330	Marion	Dismissed
9.	Lawrence Township	U-00-06-5330	Marion	Dismissed
10.	Mitchell	U-00-04-5085	Lawrence	Dismissed
11.	Monroe County	U-00-02-5740	Monroe	Dismissed
12.	North Lawrence	U-00-11-5075	Lawrence	Pending
13.	Northern Tipton	U-00-01-7935	Tipton	Pending

1999 UNFAIR PRACTICE COMPLAINTS

	SCHOOL CORPORATION	CASE NUMBER	COUNTY	DISPOSITION
1.	Hobart	U-99-16-4730	Lake	Pending
2.	LaPorte	U-99-09-4945	LaPorte	Dismissed
3.	Lawrenceburg	U-99-27-1620	Dearborn	Dismissed
4.	Marion	U-99-01-2865	Grant	Pending
5.	Marion	U-99-02-2865	Grant	Pending
6.	Muncie	U-99-24-1970	Delaware	Dismissed
7.	Noblesville	U-99-30-3070	Hamilton	Dismissed
8.	North Montgomery	U-99-08-5835	Montgomery	Pending
9.	North Newton	U-99-26-5945	Newton	Dismissed
10.	Randolph Eastern	U-99-03-6835	Randolph	Dismissed
11.	South Central	U-99-05-4940	LaPorte	Dismissed
12.	South Putnam	U-99-19-6705	Putnam	Dismissed
13.	Taylor	U-99-28-3460	Howard	Dismissed
14.	Taylor	U-99-31-3460	Howard	Dismissed
15.	Union Township	U-99-29-6530	Porter	Dismissed
16.	Vigo County	U-99-32-8030	Vigo	Dismissed

1998 UNFAIR PRACTICE COMPLAINTS

	SCHOOL CORPORATION	CASE NUMBER	COUNTY	DISPOSITION
1.	LaPorte	U-98-28-4945	LaPorte	Dismissed
2.	Mt. Pleasant	U-98-02-1910	Delaware	Decision
3.	Seymour	U-98-24-3675	Jackson	Dismissed
4.	Tippecanoe Valley	U-98-23-4445	Kosciusko	Dismissed

BEFORE THE INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

CHRIS L. GOODWIN,	)	
	)	
Complainant,	)	
	)	
and	)	Case No. U-98-02-1910
	)	
BOARD OF SCHOOL TRUSTEES OF THE MOUNT PLEASANT TOWNSHIP COMMUNITY SCHOOL CORPORATION,	)	
	)	
Respondent.	)	

HEARING EXAMINER'S REPORT

FINDINGS AND CONCLUSIONS OF FACT

1. The Yorktown Professional Educators ("Educators"), at all times material, was a "school employee organization" as that term is defined by Section 2(k) of the Indiana Code 20-7.5-1, Public Law 217-1973 ("Act").

2. The Respondent Board of School Trustees of the Mount Pleasant Township Community School Corporation ("School Corporation"), at all times material, was a "school employer" as that term is defined by Section 2(c) of the Act.

3. Complainant Chris L. Goodwin, who signed the "Complaint for Unfair Practice" herein under oath, was a "school employee" of the School Corporation as the term "school employee" is defined by Section 2(e) of the Act. Goodwin was chief negotiator for Educators in 1997-98. Additionally, he served as chief negotiator of the exclusive teachers' organization in 198182 and 1982-83.

4. Educators was the "exclusive representative" of the School Corporation's school employees as the term "exclusive representative" is defined by Section 2(l) of the Act from the spring of 1995 to the present.

5. Previously, the School Corporation's school employees were exclusively represented

by the Yorktown Classroom Teachers Association. Throughout this report, that prior exclusive teachers' organization will be referred to as the "Teachers' Organization." In a few instances wherein reference is made to both the past exclusive teachers' organization and the present one, the term "Teachers' Organization" may also be used to refer to the present exclusive teachers' organization.

6. The parties' 1995-97 contract commenced on July 1, 1995, and terminated on June 30, 1997. The parties did not reach a successor contract prior to the expiration of the 1995-97 contract. The dispute herein arose during the period in which the parties were conducting their affairs pursuant to the status quo as prescribed by Section 12(e) of the Act.

7. The parties' first negotiating session concerning a contract for the 1997-98 school year occurred on July 31, 1997.[1] At that meeting, the School Corporation's superintendent, Dr. Lawrence Loveall, presented information in response to a request by Educators. He also explained other fiscal information. Additionally, certain School Corporation proposals were delivered to Educators.

8. The parties' second negotiation session was held on August 5, 1997. Educators presented its proposals and asked when it could expect a response. Loveall explained that presently the School Corporation had only an estimate from the Indiana Department of Education ("Department") as to the School Corporation's 1998 revenue. He further explained that the 1998 estimated revenue would not provide the School Corporation with the new money necessary to fund the items in Educators' bargaining proposals. Educators sought: (1) An 8% salary increase; (2) School Corporation financing of all of the cost of the 28% increase in the teachers' health insurance premiums; and (3) School Corporation financing of each teacher's portion of the teacher retirement payment to the State fund.

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[1] In the early spring of 1997, Loveall was already aware, from the School Corporation's claims experience, that it was probable the School Corporation would incur a substantial health insurance premium increase. From the claims experience, Loveall expected approximately a 20% increase. As a result he wanted to introduce all the members of the School Corporation's joint Insurance Committee (which included Educators) to a concept which he believed could substantially reduce the cost of health insurance premiums for both the School Corporation and the teachers: a partially self-insured health plan. Additionally, in regard to the existing Anthem policy, he encouraged the teachers to consider higher deductibles and a higher stop loss amount for each of the individual insureds under a fully-funded plan: for example, Anthem's plan. In the spring of 1997, Loveall also notified all members of the joint Insurance Committee that the existing health insurance policy would expire on or about January 1, 1998.

Because Loveall desired to minimize the increase in the cost of the School Corporation's and the teachers' premium expenditures, he wanted the joint Insurance Committee to understand how a partially self-insured health plan would function and what the potential for premium savings might be. With that in mind, Loveall invited Jim Fountain of Strategic Health Plans, Incorporated to the March 5, 1997, joint Insurance Committee meeting to introduce the concept of partial self insurance. The joint Insurance Committee met again on April 28, 1997, to consider a specific proposal for a partially self-funded health plan prepared by Strategic Health Plans, Incorporated. The joint Insurance Committee did not meet again until October 28, 1997, a date after which insurance companies would be willing to provide bids regarding the School Corporation's insurance coverage for the following year.

9. Because the School Corporation did not believe that the estimated 1998 revenue would support the requested salary increase, Loveall suggested that the parties postpone their deliberations regarding such increases until after the School Corporation took its ADM count in late September or early October, 1997, and until after the School Corporation's budget hearing before the State Board of Tax Commissioners in late October or early November, 1997. Loveall explained that as a result of either or both of those two events the School Corporation might receive additional 1998 revenue which could be used for teacher salary increases. Nevertheless, Loveall insisted, that for the time being, the School Corporation's financial situation was such that he could not yet recommend any teacher salary increase.

10. Educators' chief spokesperson, Chris Goodwin, then responded that the teachers would be insulted by the School Corporation's refusal, at that time, to commit itself to a salary increase.

11. The parties' third negotiation session was held on August 12, 1997. There, the School Corporation continued to maintain that its then-existing financial situation would not permit it to fund teacher salary increases and to absorb substantially increased costs in health insurance premiums. At that time, Educators proposed a 6-1/2% increase.

12.. At the parties' fourth negotiation session on November 11, 1997, when the School Corporation again offered no salary increases, Goodwin stated that he could not comprehend why this School Corporation could not offer its teachers a salary increase in view of the fact that the surrounding school corporations had been able to do so for their teachers. Goodwin next expressed his belief that the School Corporation's inability to offer raises at that time had to be the result of either: (1) the School Corporation's mismanagement of its fiscal affairs or (2) the School Corporation's simple unwillingness to bargain with Educators. He then added that he even questioned Loveall 's professional sincerity.

13. Loveall suggested to Educators that since significantly increasing health insurance costs were depriving the School Corporation of the monies with which it could fund salary increases, the parties should work together to ascertain whether they could effect insurance premium savings by agreeing to a higher deductible and/or to a higher stop loss amount for each of the individual insureds. Loveall's above-mentioned suggestion was not a bargaining proposal but rather was his recommended means of finding the requisite School Corporation monies to fund a teacher salary increase. The parties agreed upon a forum and a procedure through which they would investigate, compare, and potentially agree on alternative methods of providing health insurance (or any other type of insurance), which would free up School Corporation monies for a teacher salary increase.

14. During the next negotiation session, on November 11, 1997, Educators declared an impasse. The Indiana Education Employment Relations Board ("IEERB") was then asked to and did provide mediation services. The IEERB mediator met twice with the parties in December, 1997, and once in January, 1998. At a January 22, 1998, mediation session, the parties tentatively agreed to a successor contract, which the parties ratified on February 17, 1998.

15. The evidence relevant to the question of whether the School Corporation negotiated in good faith at the bargaining table is composed of the unchallenged testimony of five witnesses and of approximately six hundred of pages of exhibits which irrefutably substantiate the time and attention the School Corporation devoted to the bargaining processes.

16. First, the School Corporation vigorously pursued alternative actions which would free up School Corporation dollars to be used to fund teacher salary increases. Most notably, the School Corporation encouraged Educators to obtain savings by reducing the cost of the teachers' health insurance premiums. In particular, the School Corporation recommended the adoption of high deductibles and a higher stop loss amount for each of the individual insureds. Alternatively, the School Corporation proposed, as early as March, 1997, that the teachers adopt a partially self-insured health plan. It can be inferred that, in all likelihood, Educators fully appreciated both the School Corporation's financial situation and the potential significance that reduced health insurance costs could have on the issue of a salary increase.[2]

17. Second, during their negotiations, the parties engaged in specific exchanges concerning certain subjects. For example, the parties talked about eliminating an index for weight lifting and about establishing a "strength coach" position with a designated index. Additionally, the parties talked about whether the School Corporation could afford to increase the early retirement benefit from $9,000 to $10,000. A dispute arose between the parties as to whether the School Corporation had actually agreed to such a $10,000 benefit. The School Corporation's response was that, considering the state of its financial affairs at the time, Loveall would not have agreed to increase the early retirement benefits ". . . unless [he] was out of [his] mind."

Later, when Educators proposed that its president be afforded four school work days on which to conduct union business, the School Corporation tentatively agreed to grant two such union leave days. Additionally, Educators proposed that the children of teachers, who reside outside the School Corporation, should be permitted to attend the School Corporation without paying nonresident tuition. The School Corporation rejected that proposal. On the other hand, the School Corporation tentatively agreed to changes in the contract language pertaining to the sick leave bank.

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[2] In recent years, the School Corporation has had low cash balances of approximately 3% or 4% of the respective general fund budgets. Several years ago, the parties designed a procedure through which they could work around the bargaining problem presented by consistent, low cash balances. The parties agreed to a bargaining procedure which would belatedly assure the teachers of the maximum possible increase in their salaries while simultaneously preserving the School Corporation's fiscal integrity.

Under this procedure, the teachers first negotiated their regular salary increase. Then, in addition, the parties agreed that if the School Corporation's total general fund revenues exceeded its total general fund expenditures in a given year, the teachers would receive an agreed-upon portion of that excess revenue. In the 199798 negotiations, Educators did not even propose the inclusion of such a provision in the successor contract. In view of the Educators' argument that the School Corporation had sufficient funds to finance a 6-1/2% salary raise and to absorb the potentially significant increased cost of the Anthem premiums, it is revealing that Educators did not choose to test the School Corporation's contention that it could not afford to pay for both the cost of a premium increase and a salary increase by simply proposing to accept a portion of the monies the School Corporation would allegedly have had remaining in its operating balance at the close of the 1997-98 fiscal year.

Finally, the parties tentatively agreed to clarify and simplify certain contract provisions by making some language and format changes.

18. This dispute arose, in part, because Educators passionately believed that it had a contractual right to participate in the selection of the health insurance carrier. Educators' belief was based on its interpretation of the significance of (or the meaning of) a 1982 language change in the health insurance provisions in the parties' 1981-82 contract. To understand why Educators believed it had the above-stated right, the circumstances surrounding that 1982 revision to the contract must be reviewed.

As the bargaining process proceeded in 1981-82, the relationship between the parties became strained and contentious. A job action was in progress when a new superintendent arrived in the fall of 1981. To quickly settle the 1981-82 contract, the School Corporation offered unusually generous health insurance benefits.

19. As a result of those unusually generous 1981-82 insurance benefits, the School Corporation's actual 1981-82 insurance claims expenditures exceeded its estimated claims expenditures by approximately $30,000. In the 1982-83 bargaining process, the School Corporation endeavored to limit its increased expenditures on health insurance premiums for that school year. In a move to capitalize on the School Corporation's predicament concerning a rise in health insurance costs in 1982-83, the Teachers' Organization, in the 1982-83 negotiations, agreed to absorb a portion of the increase in the cost of that year's insurance premiums in exchange for the right to participate in the decision making pertaining to the selection of specific insurance coverages and benefits contained in both the teachers' health and life insurance plans. The parties expressly stated in their 1982-83 contract that "[t]he plan[s] [of insurance coverages and benefits] shall be agreed upon by the Board and the [Teachers' Organization]."[3] Now, the parties vehemently disagree

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[3] The parties oral agreement during the bargaining process in 1982-83 regarding insurance was reduced to writing and set forth in their 1982-83 contract. The parties have carried forward the language in those 1982-83 contractual insurance provisions into every successor contract. The parties' 1995-97 contract contained the following provisions pertaining to health and dental insurance:

ARTICLE V

Insurance

A. Health Care Insurance - Employee Single Coverage

1. Dental Insurance
The Board shall pay all but Forty Eight Dollars ($48.00) of the cost of a single plan of dental insurance for each participating employee. *The plan shall be agreed upon by the Board and the Association.*

2. Hospitalization and Major Medical Insurance
The Board shall pay 77-1/2% of the premium of a single hospitalization and major medical insurance policy for each participating employee. *The plan shall be agreed upon by the Board and the Association.*

B. Health Care Insurance - Employee Family Coverage

1. Dental Insurance
The Board shall pay all but Eighty Dollars ($80.00) of the cost of a family plan, an employee and spouse plan, or an employee and children plan of dental insurance for each participating employee. *The plan shall be agreed upon by the Board and the Association.*

2. Hospitalization and Major Medical Insurance
The Board shall pay 77-1/2% of the premium of a family hospitalization and major medical

as to what that sentence in their 1982-83 contract meant. Educators argues that by agreeing to the inclusion of that sentence, in the insurance provisions, the School Corporation agreed that the parties would bargain both the plan and the carrier. The School Corporation contends that that sentence meant what it said on its face: that is, that the parties would bargain the plan.

20. The parties' 1980-81 and 1981-82 contracts contained language in the health and life insurance provisions which stated that the School Corporation would pay a certain portion of the cost of the premium for a teacher to enroll in the School Corporation's group health and life insurance plans. Additionally, those two contracts contained language which stated that the School Corporation had the sole right to select the carriers to provide such health and life insurance.[4]

21. During the hearing, Goodwin contended that, in the early 1980's, school attorneys and

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insurance policy for each participating employee. *The plan shall be agreed upon by the Board and the Association*. The Board shall pay 77-1/2% of the premium of an employee and spouse hospitalization and major medical insurance policy for each participating employee. *The plan shall be agreed upon by the Board and the Association.* The Board shall pay 77-1/2% of the premium of an employee and children hospitalization and major medical insurance policy for each participating employee. *The plan shall be agreed upon by the Board and the Association.*

(emphasis added)

[4] Those insurance provisions in the parties' 1980-81 and 1981-82 contracts stated:

ARTICLE IV

Salary and Wage-Related Fringe Benefits

N. The Board will pay toward the cost of hospital, surgical, and medical care type insurance for each teacher employed under regular contract and enrolled in *the school corporation's* group medical insurance plan. Up to the amounts specified below will be paid to such *insurance company or companies* as is determined and *selected solely* by the Board with the teacher paying not less than One Dollar ($1.00) per year. Maximum Board Payment Per Teacher:

1. Employee Single Coverage: Up to $275.00 per year.
2. Employee Family Coverage: Up to $850.00 per year.

O. The Board will pay toward the cost of a group term life with accidental death benefit plan with a minimum face value of $10,000 and a salary protection policy for each teacher employed under regular contract and enrolled in *the school corporation's* group life insurance *plan*. Up to the amount(s) specified below will be paid to such *insurance company or companies* as is determined and *selected solely* by the Board with the teacher paying not less than one dollar ($1.00) per year. Maximum Board Payment Per Teacher:

1 . Group Term Life Insurance: Up to $35.00 per year.
2. Salary Protection Insurance: Up to $68.00 per year.

(emphasis added)

school negotiators commonly used the term "plan" to mean (or refer to) the term "carrier."

22. In his deposition testimony, Goodwin categorically denied that the parties talked about the meaning of the term "plan" during the negotiations in 1982-83 when they revised the language in the insurance provisions in their contract for that school year. At the hearing, Goodwin again stated on two occasions that the parties did not talk about the meaning of the term "plan" during their 1982-83 negotiations. Then, he suddenly explained in considerable detail the specific manner in which the parties had talked about the meaning of the term "plan" during their 1982-83 negotiations.[5]

23. Teresa Nelson was a member of the Teachers' Organization in 1982-83 and later was a member of Educators. She testified that, as a result of the 1982-83 negotiations, "we were finally given the right to have a part of our decision making for the insurances" and that, therefore, "we would be able to talk about who our carrier was going to be."

Nelson was not a member of the Teachers' Organization's bargaining team in 1982-83. Consequently, she had no direct knowledge as to the intent of the parties when they changed the contractual language in the insurance provisions that year. Thus, Nelson's above-quoted statement will be afforded no weight herein.

24. Goodwin also placed his credibility in issue in regard to the claims service rendered

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[5] The following exchange occurred between Goodwin and the School Corporation's counsel:

Q. When you put the language in you did not discuss what plan would include?
A. Of course we did; we had to. Of course, we had to know and discuss the actual one sentence phrase that said the board will agree to the plan, and the plan means the following things.
Q. So you're saying that at the time you discussed that "plan" meant everything?
A. Yes.
Q. That's not what you testified. *Before you said* you didn't discuss what plan meant?
A. Okay. In the version I've tried to filter out of "plan" means carrier, if "plan" means this, if "plan" means that. When we put the actual sentence in, the board and the association shall agree to the plan, *we generally just basically said, we all know what "plan " means, "plan" is this, this, this, and this.* That was simple; there wasn't a big discussion about that.
Q. *So you are testing today* that actually at the negotiation session you said "plan" means this and -
A. Oh, yeah, oh, sure.

* * *

Q. Why did you not include that definition in your contract?
A: I guess because *we all knew what the word "is" means.*
Q: *I guess I don't understand that answer*.

(emphasis added)

by a more recent service provider, Delaware Benefits.[6]

25. At the hearing, Goodwin maintained that, pursuant to the 1981-82 contract, the School Corporation determined what the content of the teachers' health plan would be.

26. At the hearing, Goodwin explained that Blue Cross offered the best policy in the early 1980's. He further explained that at that time not many insurance companies were involved in the public school insurance business. He also said that, at that time, each of those insurance companies had its own distinct plan of benefits.

Finally, Goodwin observed that Blue Cross took advantage of the fact that school corporations preferred its policy and unjustifiably kept raising its rates. To encourage Blue Cross to lower its rates, Goodwin said that school corporations had to either contract with another company for a year or, at least, threaten to do so. From Goodwin's testimony, it can reasonably be inferred that very little competition existed in the insurance business in the early 1980's. Therefore, insurance companies were not eager to bid on solicitations containing specifications other than those offered in their own distinct policies.

27. No evidence was adduced to show that the parties bargained the carrier between 1982-83 and 1995-97.

28. No evidence was adduced to show that subsequent to the 1982 revision to the contract any disharmony continued between the parties in regard to negotiations on health insurance until 1997-98. Thus, one can reasonably infer that the 1982 revision to the contract, which expressly provided that the parties would bargain the health plan, resulted in harmonious negotiations on health insurance from 1982-83 through 1995-97.

29. Subsequent to the 1982-83 contract and prior to the 1995-97 contract the parties added an insurance provision to their contract which provided the teachers Section 125 benefits [7]

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[6] At the hearing, Goodwin also testified that the claims service of Delaware Benefits was not comparable to that of Anthem. He contacted Terry Lothamer, a School Corporation claims consultant, about a claims error. Lothamer referred him to an individual at Delaware Benefits, and the matter was resolved to Goodwin's satisfaction. Goodwin further claimed that in three other instances, Delaware Benefits failed to pay for a service rendered when the claims were initially submitted. However, he failed to fulfill his legal obligation to notify the School Corporation of those three incidents, which allegedly occurred subsequent to the date that he signed his answers to interrogatories. In other words, by not complying with his legal duty to supplement his interrogatories, Goodwin precluded the School Corporation from potentially preparing to challenge the credibility of his testimony in regard to the new claims process.

No other teacher complaints regarding Delaware Benefits' claims service were lodged with the School Corporation or with Lothamer.

[7] That provision stated:

> The Board will provide the benefits of Section 125 of the 1986 Internal Revenue Code, as amended, to all certified staff through a provider agreed upon by the Board and the Association. Initial enrollment fee and monthly service fee to be paid by the member. The provision of such benefits will comply with all state and federal laws. *A committee*, composed of three members appointed by the

30. The parties carried forward all of the insurance provisions from the 1995-97 contract into their successor contracts for 1997-98 and for 1998-2001.

31. Either at the time of the parties' dispute during the 1982-83 negotiations or soon thereafter, the parties established a joint Insurance Committee through which they arrived at decisions, by consensus, concerning all health insurance issues except those pertaining to the total dollar amount the School Corporation would pay for teacher health insurance. That joint Insurance Committee soon began to deal also with all of the other teacher insurance coverages: dental, life, and long-term disability.

The joint Insurance Committee was originally composed of only the superintendent and the president of the Teachers' Organization. The superintendent who served between 1988 and 1994, Jerry Secttor, met initially with only the president of the Teachers' Organization to jointly make decisions, by consensus, regarding potential changes in insurance plans. They then recommended their decisions, regarding potential changes in insurance plans, to the Teachers' Organization and/or the teachers for their determination as to whether they wished to accept or reject the recommended changes.

In all instances, the Teachers' Organization and/or the teachers decided whether they wanted to make such a recommended change in an insurance plan and then reported their decision to Secttor, who implemented the teachers' decision.[8] Later, he met with the Insurance Committee of the Teachers' Organization to make recommendations to the Teachers' Organization and/or the teachers about potential changes in insurance plans.

32. The joint Insurance Committee operated similarly under Loveall with the exception that it made recommendations to the teachers concerning more time-consuming and complex insurance issues. Under Loveall, the parties still addressed all teacher insurance issues in the joint

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Board and three members appointed by the Association, *shall choose the carrier and the plan*. (emphasis added)

[8] Through the joint Insurance Committee, the parties have made significant decisions concerning many insurance issues except those pertaining to how much the School Corporation would pay toward the cost of teacher insurance. In the joint Insurance Committee, while Secttor was superintendent, the parties decided to absorb a 39% increase in the cost of the Blue Cross health insurance premium and to switch to managed care for the delivery of their mental health services. Under that managed-care delivery system, an insured could no longer determine whether he or she would be treated by a physician or by a "counselor." Instead, employees of an "alliance" managing that new mental health delivery system were to make such decisions.

Insurance Committee except the issue of the School Corporation's contribution[9] to the cost of the premiums.[10]

The change in the operation of the joint Insurance Committee occurred for several reasons. First, more competitive insurance products were available in the insurance market during Loveall's tenure than during Secttor's. Second, the addition of two School Board members to the joint Insurance Committee increased its significance.[11] Third, apparently, Loveall had an innate interest in public school insurance products.

Loveall obviously believed that through the laborious process of examining and evaluating insurance products, he, Educators' Insurance Committee, and the School Board could, from time to time, provide additional benefits to the teachers through better insurance plans or through lower-cost plans with benefits almost identical to those of the existing plans. The evidence substantiated Loveall's belief that through constant evaluation of alternative products in a competitive insurance market, the joint Insurance Committee could identify and did obtain bargains which benefited the teachers.

33. The joint Insurance Committee gathered information about particular plans and then discussed the merits of such plans. In instances wherein the joint Insurance Committee reached a positive consensus about a particular insurance plan, the joint Insurance Committee submitted the specifics of that consensus plan to the Teachers' Organization and/or the teachers for their review, consideration, and input (usually through a teacher vote). In instances wherein the teachers, through their vote (or other input), expressed a desire to change from their existing insurance plan to the plan recommended by the joint Insurance Committee, the Teachers' Organization transmitted the teachers' decision to the superintendent who then recommended the Teachers' Organization's decision to the School Board. The evidence unequivocally demonstrates that the School Board adopted and implemented the teachers' decision in all instances, regardless of whether the teachers

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[9] Subsequent to 1982-83, the parties have continued determining the amount of money the School Corporation will contribute toward the cost of the teachers' health insurance premiums in the negotiations committee. For example, in 1987-89, the School Corporation agreed, in the negotiations committee, to contribute 77-1/2% of the cost of the premium for a family plan. Since 1988-89, the Teachers' Organization has often unsuccessfully attempted, in the negotiations committee, to obtain an increase in the School Corporation's contribution toward the cost of the teacher health insurance premium.

[10] That financial issue has continued to be deliberated solely in the negotiations committee. At no time during the existence of the joint Insurance Committee were negotiations conducted within that Committee. Instead, all joint Insurance Committee recommendations were arrived at through a consensus among the Committee's members and dealt solely with matters pertaining to insurance plans.

[11] During Loveall's tenure, from 1994 through 1999, the joint Insurance Committee was composed of all of the members of Educators' Insurance Committee, two School Board members, and the superintendent.

voted to change to another plan or to retain an existing plan.[12]

In other words, the teachers could participate in any potential new benefit, while incurring no risk, under the past practice of the joint Insurance Committee. If a teacher benefit was recommended by the joint Insurance Committee and if the teachers voted to accept the benefit, the School Corporation always adopted and implemented the teachers' wishes. If the teachers, through their vote, declined to accept any such benefit, the School Corporation simply continued financing the existing insurance plan.

34. The evidence shows that, in the past, if Educators asked the School Corporation to extend the existing health insurance policy so as to further consider alternative courses of action in regard to health insurance coverage after the expiration of that existing policy, the School Corporation always granted Educators' request and so extended the existing policy.

35. The evidence shows that, in this instance, Educators did not ask the School Corporation to extend the existing health insurance policy.

36. The joint Insurance Committee, which had met several times in the spring of 1997, did not meet again until October 28, 1997. It did not do so because existing health insurance carriers will not provide school corporations with statements of their claims experience until approximately two months prior to the expiration of the existing insurance policies. Similarly, an existing health insurance carrier will not disclose to a school corporation what the increase in the cost of premiums for continued coverage will be until approximately 1-1/2 months prior to the expiration date of a

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[12] During Loveall's School Corporation service, the parties, through the joint Insurance Committee, made important determinations regarding many insurance issues. In that particular period, the teachers adopted a number of joint Insurance Committee recommendations dealing with specific aspects of various plans. For example, the joint Insurance Committee made decisions regarding the preferred provider organizations ("PPO"s) to be utilized. The joint Insurance Committee switched from one PPO to another. It decided to reduce the percentage paid to providers not in the PPO from 80% to 70%. The joint Insurance Committee also decided to begin using prescription cards rather than sending in receipts for reimbursement.

During that period, Educators, acting on teacher input, accepted or rejected joint Insurance Committee recommendations regarding entire plans. On three occasions, the teachers voted to accept the joint Insurance Committee's recommendation to change plans. In the spring of 1995, they voted to change to a new life insurance plan *because it provided more extensive coverage*. In April, 1997, they voted to change their dental coverage from Accordia to *a superior Dental Guard plan*. In December, 1997, they voted to change to a partially self-insured health plan, *which would be accompanied by a salary increase.*

On the other hand, the teachers twice rejected recommendations from the joint Insurance Committee. In the fall of 1995, they voted to retain their Accordia health plan rather than to switch to a plan offered by the East Central Indiana Medical Trust. Likewise, they rejected a recommendation to change from their Dental Guard plan to a less costly alternative plan which offered almost identical benefits. *In the latter instance, Loveall had offered to use the savings from the cost of the premiums to give the teachers approximately a 1/2% salary increase*. Nevertheless, Educators *itself* rejected his offer. Each of the teachers' decisions described above were adopted and implemented by the School Board, regardless of whether the teachers accepted or rejected the respective recommendations of the joint Insurance Committee.

given policy. Consequently, a school corporation's selection of the carrier to provide its health insurance coverage in the year following the expiration of the existing policy must be made expeditiously for reasons beyond the control of a school corporation. Because carriers control the public school health insurance marketplace, school corporations and teachers must accept this unsatisfactory practice of rushing the decision making in procuring health insurance coverage.

37. Loveall convened the October 28, 1997, meeting of the Insurance Committee to talk about the School Corporation's bidding for health and other insurance coverages, including both fully-funded health plans, such as Anthem's, and partially self-insured health plans. Loveall had invited Terry Lothamer and Sue Crosier,[13] who were both associated with Insurance and Risk Management, to present to the joint Insurance Committee a second explanation about the niceties of a partially self-insured health plan. Following that presentation and the joint Insurance Committee's discussion, that Committee; by consensus, decided to have Loveall or an expert prepare, for the Committee, health plan bid specifications for both a fully-insured plan and a partially self-insured plan. The Committee intended to solicit competitive bids for both types of plans when the bid specifications were completed.

At that time, Loveall told the joint Insurance Committee that he wanted Lothamer, serving as an insurance broker, to develop those specifications and to solicit those bids. Additionally, Loveall told the Committee that he wanted Lothamer to assist in the procurement of all of the other teacher insurance products. Before the committee adjourned, a consensus was reached that Lothamer, as a broker, would prepare bid specifications and solicit bids for both a fully-funded plan and a partially self-insured plan.

38. The reason the joint Insurance Committee specifically considered the need for a School Corporation insurance broker at the October 28, 1997, meeting, was because Loveall had told the Committee he was unqualified to deal with an insurance transaction as complex as setting up a system of partially self-insured health coverage.[14] He told the Committee that a professional must do it and that Lothamer came highly recommended.

Soon thereafter and at Loveall's request, Lothamer agreed to serve as a consultant rather than as a broker.[15] He then only solicited net of commissions bids.[16]

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[13] Sue Crosier, for a number of years, had provided professional services to the School Corporation in regard to its liability and property coverages. She also resided within the geographical district served by the School Corporation. Lothamer did not live within the School Corporation's boundaries. Loveall had invited Ms. Crosier to illustrate to Educators that Insurance and Risk Management had had personal ties with the School Corporation over many years.

[14] Many in the public school community have long conjectured that self-insured plans are inherently accompanied by some additional risk. However, since attorneys and an insurance consultant, who were experts on partially self-insured plans were advising them, Loveall and the School Board believed they could provide a salary raise to the teachers, which would lead to a contract settlement, and provide all school employees, including the superintendent, with a health plan almost identical to Anthem's without incurring such additional risk.

[15] Several days subsequent to the October 28, 1997, joint Insurance Committee meeting, Loveall spoke with a long-time acquaintance from Accordia, Paul Biltmeyer, who advised Loveall that he might wish to consider engaging Lothamer as an insurance consultant rather than as a broker. Such a change in Lothamer's professional

39. John Lozar was an insurance agent who had a teacher following because he provided them with deferred compensation plans. Although Lozar knew about partially self-insured health plans, Loveall did not believe Lozar had nearly the experience in designing and implementing such plans as did Lothamer. Lozar was not specifically excluded from obtaining bids on a partially selfinsured plan, but he had no financial incentive to do so on net of commission bids.

40. On December 10, 1997, the parties' engaged in "discussion." During that meeting, Dennis O'Rourke, a leader within Educators, expressed his concern about the procedure the joint Insurance Committee was employing in regard to the health insurance plan. Therein, O'Rourke stated: "[Educators] feels] that we were backed against the wall. We [Educators] walked into a meeting [on October 28, 1997] with the consultant already selected." He further stated that "more ... consultants should have been given an opportunity to submit a bid for their services." He concluded that Educators "would like more input in the selection of the ... consultant."

Loveall explained to Educators that, although the school corporations have a duty, under the Act, to bargain salary and wage-related fringe benefits, the Legislature has also charged school corporations with carrying out the broader mission of conducting educational programs for children who are in kindergarten through grade 12 and who reside within their respective school districts.[17] To enable school corporations to conduct such educational programs, the Legislature granted. broad

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relationship would benefit the School Corporation in two ways. First, the cost of Lothamer's services to the School Corporation would be considerably less if he were serving as a consultant. Second, if Lothamer were a consultant, his principal duty of loyalty would be to the School Corporation. Lothamer then agreed to serve as a consultant for one-half of what he estimated his broker's commission on the Anthem policy would have been. Lothamer's personal services contract was handled in a manner identical to that which was applied to all School Corporation personal services contracts.

[16] Insurance brokers and agents, who work solely on a commission, would have had no financial incentive to obtain bids herein because the bids were to be net of commissions. In other words, in this solicitation process which involved a consultant, the insurance companies simply made contractual offers directly to the School Corporation; and no brokerage fees were included as part of the insurance transaction. Lothamer was paid a fee for his services, just as an attorney or an accountant would have been paid a fee for services rendered. Additionally, as a consultant, Lothamer's principal duty of loyalty was to the School Corporation: that is, his loyalties were not divided between the School Corporation and the various insurance companies which proffered bids. A broker's or an agent's loyalties are generally divided.
Educators incorrectly believed that if the School Corporation sought bids without the use of brokers and/or agents with their accompanying commissions, the School Corporation would be precluded from receiving bids from all interested insurance companies. However, as a consultant, Lothamer already had contracts with most of the insurance companies from whom one would wish to solicit bids. Moreover, as a consultant, he could solicit bids from any companies with whom he did not have contracts.

[17] *See* the Indiana School Powers Act, IC 20-5-1 through IC 20-5-6; specifically note IC 20-5-2-1.2.

discretionary powers to school corporations, including the power to hire professional experts.[18] School corporations are not required to solicit bids when hiring such professionals.[19]

Loveall further explained to Educators that the law permitted the School Corporation to pay only for professional services which are provided exclusively to represent the interests of the School Corporation, as contrasted to the interests of other groups such as Educators. On the other hand, Loveall assured Educators that it could hire its own insurance consultant to represent Educators' interests in the joint Insurance Committee procedure.

41. At the December 11, 1997, joint Insurance Committee meeting, Lothamer explained a partially self-insured health plan which would be almost identical to the existing Anthem plan.[20] Under that partially self-insured plan, the School Corporation and the teachers would not incur an increase in the cost of the health insurance premium. On the other hand, Lothamer noted that, although the PPO network under the partially self-insured plan would be almost identical to Anthem's, St. John's Hospital and several Indianapolis physicians would no longer be available to the teachers. In other words, the specific health plan benefits under the partially self-insured plan would be identical to those of the Anthem plan; but, the new accompanying PPO network would be slightly different from Anthem's. Anthem had proprietary rights in its PPO network.

42. Lothamer had obtained bids from three strong, reliable stop loss insurance companies: American United Life ("American United"), Continental, and American Fidelity. However, he specifically recommended American United because it included the medical expenditures and the prescription drug expenditures in both the specific and aggregate stop loss amounts. That provision

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18 *See* IC 20-5-2-2(7).

19 *See* Attlin Construction, Inc. v. Muncie Community Schools, 413 N.E. 2d 281, 187 (Ind. App. 1980).

20 When the bids regarding a third-party administrator and stop loss carriers for a partially self-insured plan were opened on December 11, 1997, Loveall immediately thought that the implementation of such a plan might well effect sufficient savings in the cost of health insurance premiums so as to allow the School Corporation to offer the teachers a meaningful raise. At that time, Loveall believed that such a School Corporation offer would, in all likelihood, lead to a contract settlement. Thus, he "was hopeful that [they] could move on with the process."

Loveall had surmised, as early as March, 1997, that the parties could only resolve their potential, future disagreements over salary increases by invoking a mechanism that would control School Corporation and teacher expenditures on health insurance. For that reason, Loveall had scheduled two joint Insurance Committee meetings in early 1997 to consider such a mechanism. By February, 1997, Loveall had already concluded, based on the School Corporation's claims experiences up to that date, that the cost of the Anthem premiums would increase, at least, about 20%.

After learning on November 12, 1997, that Anthem would increase the cost of its premiums by 28% (rather than the estimated 20%), the School Corporation would, in all likelihood, have been convinced that the fiscal resources available to it in 1997-98 would be insufficient to simultaneously fund any meaningful teacher salary increase and to absorb a 28% increase in the cost of those premiums. Furthermore, the School Corporation would have then known that the only means through which it could fund a salary raise would be through a change in the health insurance delivery system under which the teachers could have a plan of coverage almost identical to Anthem's at a cost approximating the cost of the 1997 Anthem policy. Loveall informed all members of the joint Insurance Committee, in writing, of the 28% increase on November 17, 1997.

in American United's plan of coverage afforded the School Corporation and the teachers greater assurance that the School Corporation's exposure to liability, arising from the partial self-insurance aspect of the plan, was appropriately limited. Additionally, Lothamer recommended American United because he felt more comfortable with a company which he personally knew to be both stable and established. He had frequently dealt with American United.

43. The transcript is unclear as to exactly what occurred at the December 11, 1997, joint Insurance Committee meeting in regard to a Committee consensus on a potential third-party administrator. Nonetheless, some evidence exists regarding the matter. On December 11, 1997, Lothamer explained to the joint Insurance Committee that a number of such administrators existed. On the other hand, he apparently did not explain why he had focused his investigative attention exclusively on two particular companies: Delaware Benefits Administration ("Delaware Benefits") and Employee Plans.[21] Lothamer highly recommended Delaware Benefits as a local company with an excellent reputation for good service.[22] Lothamer brought representatives of Delaware Benefits to the school to interview.

44. The transcript does not state that a joint Insurance Committee consensus recommended Delaware Benefits as the potential third-party administrator. However, it can be inferred that the parties acquiesced in Lothamer's recommendation.[23]

45. Direct evidence demonstrates that a consensus was arrived at in the joint Insurance Committee as to which company should be retained to provide the requisite stop loss coverage the School Corporation would need to potentially carry out a partially self-insured program. Tom Riegle was a School Board member from July, 1994, through 1998, who served on the joint Insurance Committee during that four-year period. He testified with some specificity about what occurred at

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[21] That latter company was owned by Insurance and Risk Management. On December 11, 1997, Lothamer was a partner in Insurance and Risk Management, and he brought that fact to the Committee's attention. Lothamer told the Committee that Employee Plans did fine work and that he had previously placed many satisfied clients with Employee Plans. He noted, however, that Employee Plans was in the process of upgrading its software and that ".. . it would [be] a bad match [in regard to meeting the School Corporation's immediate needs]."

[22] In regard to the joint Insurance Committee's deliberations on October 28 and December 11, 1997, pertaining to a third-party administrator for a potential partially self-insured health plan, Educators' President Larry Stevens candidly stated that he did not recall the content of such deliberations or whether such deliberations about "a specific overseer [occurred] at that time." Other than, that which is stated in this footnote and in the finding above, the transcript is silent on the subject of the selection of the third-party administrator.

[23] The evidence establishes three important facts from which it can be inferred that although the parties, in the joint Insurance Committee, may not have formally adopted Lothamer's recommendation of Delaware Benefits, they unquestionably acquiesced in Delaware Benefits becoming an essential component of a partially self-insured plan which the joint Insurance Committee recommended to the teachers as an alternative means of receiving health insurance coverage. First, a third-party administrator is an essential component part of any partially self-insured plan. Second, Delaware Benefits was the only company which would satisfy the parties' needs. Third, the evidence shows that neither the members of Educators nor of the School Corporation on the Insurance Committee objected to the adoption of Delaware Benefits.

the December 11, 1997, meeting in regard to the formation a Committee consensus pertaining to the recommendation of American United to be the stop loss carrier. Riegle observed that Lothamer had solicited approximately fifteen bids for stop loss coverage. Lothamer received rive bids. Two such bids were from small companies with which Lothamer was not familiar. Lothamer did not recommend those two to the Committee. Seven companies declined to bid because "of the School Corporation's poor claims experience, which was also the reason for the 28% increase in the cost of the Anthem premium.

The two other companies which were "top rated companies ... strong companies," were Continental and American Fidelity. Riegle observed that Lothamer preferred American United, even though it was not the lowest bidder, because it was stable and established. Riegle also observed that American United's plan of coverages afforded the School Corporation and the teachers greater assurance that the School Corporation's exposure to liability was appropriately limited.[24] Therefore, according to Riegle, the joint Insurance Committee "went with AUL [American United]."

46. Following Lothamer's presentation at the December 11, 1997, meeting, Educators asked to conduct a caucus. Such a caucus was not part of the customary *modus operandi* of the joint Insurance Committee. When Educators returned, President Stevens announced that Educators wanted to bargain all of the issues pertaining to the health insurance plan.

47. Loveall asked: "[W]hy start [bargaining] now... [we] have been making these decisions in the [joint] insurance committee for years ... why shift to bargaining?" The two School Board members reacted in a similar manner. Then, a heated exchange occurred between Stevens and Riegle concerning whether the term "plan" in the parties' contract required the School Corporation to bargain the identity of the insurance carrier which would provide health insurance coverage for the teachers.

48. At that meeting, the parties did not agree as to how they would proceed. In particular, Educators, during the December 11, 1997, meeting, did not *insist* that all future talk about all health insurance plans would occur exclusively in the negotiations forum.

49. One can infer that following the December 11, 1997, meeting, it became well

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[24] Lothamer used a hypothetical example about a school bus accident with a number of teachers aboard to illustrate why such a provision was of import to both the School Corporation and the teachers. Assume the specific stop loss amount was $20,000; the aggregate, $50,000. Under the American United stop loss provision, the School Corporation's total liability for medical and prescription claims relating to one bus wreck within a one-month period would be $50,000. More importantly, further assume that one teacher had $100,000 of medical and prescription claims (of which, $10,000 were prescription drug claims) and that a second teacher had $5,000 of claims, the School Corporation's total liability would be $25,000 under American United's provision in the plan of coverage. In both instances, in the above hypothetical situations, American United, as a stop loss carrier, would pay all claims exceeding the medical costs and the prescription drug costs in both the specific and aggregate stop loss amounts. In other words, in the latter hypothetical situation, the School Corporation would be liable for only $20,000, for the teacher with $100,000 of medical and prescription claims (of which, $10,000 were prescription drug claims), plus $5,000 for the other teacher.

understood throughout the school community that the School Corporation would now bargain a meaningful increase in teacher salaries under the partially self-insured plan. The amount of money available to the School Corporation for such salary increases would have been common knowledge throughout the school community shortly after the December 11, 1997, meeting. Loveall had already disclosed that he would appropriate any savings in the cost of insurance premiums to teachers salaries. Additionally, Loveall had indicated that ultimately he would allocate $50,000 from a 199697 special education cooperative overcharge to increase teacher salaries.

50. After the December 11, 1997, joint Insurance Committee meeting and prior to a teacher vote conducted by Educators on December 19, 1997, the parties engaged only once in negotiations. They did so in a mediation session on December 18, 1997. At that mediation session, Educators did not insist that all issues pertaining to the health insurance plan be addressed exclusively in negotiations.

51. At the December 18, 1997, mediation session, according to Goodwin, Educators sent an offer "to the board [proposing] to tentatively agree to a [health insurance] plan that the board was planning on voting on the next day." Goodwin further explained that Educators had "offered to tentatively agree to that particular plan based upon what we [Educators] thought was going to a teacher vote the next morning." Goodwin described the School Board's response to that proposal as follows: "The response was, no, we [the Board] do not choose to bargain that, we [the Board] don't think it's bargainable." Goodwin further alleged that, prior to the mediation session on December 18, 1997, the School Corporation had already decided to institute a partially self-insured plan even though Educators' negotiating team favored renewal of the Anthem policy.

52. It is absolutely clear that if Educators *had insisted on bargaining* all health insurance plan issues at the negotiations table, the School Corporation would have done so. Loveall was fully aware that he and the School Board had no alternative but to bargain the health insurance plan if Educators insisted on doing so. Loveall observed that the law would have unequivocally required such action by the School Corporation. Therefore, one can infer that the School Corporation would not have refused to bargain the health insurance plan at the December 18, 1997, meeting.[25]

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[25] Four findings herein support the above-stated conclusion. First, throughout this report, all findings, in regard to events in which Loveall was involved, imply that Loveall was a credible witness. Second, all findings, in regard to events in which Stevens was involved, similarly imply that he was a credible witness. Third, Stevens' account of what occurred at the parties' December 18, 1997, mediation is not necessarily inconsistent with Loveall's. Stevens' account of what may have occurred at the December 18, 1997, mediation session concerning the health insurance plan is not incompatible with the other credible evidence on that issue. In regard to what occurred at that session, Stevens stated: "I think there was effort *maybe* made during that mediation session to try and get the insurance settled at that time as far as agreeing to handling it during the negotiations at that time, which was rejected." (emphasis added) Fourth, in several other instances, Goodwin was not a credible witness.

Finally, in all likelihood, at the December 18, 1997, mediation session, Educators proposed that the School Corporation should continue Anthem's fully-funded health insurance plan and that the School Corporation should agree to absorb its 77-1/2% portion of the 28% increase in the cost of the 1998 Anthem premium. Additionally, in all likelihood, Educators' proposal did not simultaneously address the salary issue within any framework of estimated School Corporation revenues.

53. Board Member Tom Stewart implied that if Educators had insisted that the School Board bargain all insurance plan issues, he would have argued in favor of doing so. Moreover, it can be inferred that *if Educators had so insisted on bargaining, Stewart would have participated in the abolishment of the joint Insurance Committee*.

54. If Educators had not followed the past practice and had not allowed the teachers to vote to change to a partially self-insured plan, Loveall would have strongly recommended to the School Board on December 19, 1997, that it should renew the Anthem policy. It can be inferred that Loveall would also have recommended the abolishment of the joint Insurance Committee. Finally, it can be inferred that the School Board would have acted on Loveall's strong recommendations. The School Board would have then renewed the Anthem policy and abolished the joint Insurance Committee.[26]

55. At all times material, Educators never insisted that the insurance plan be dealt with exclusively in negotiations. Instead, the parties continued to communicate with each other at two levels: (1) in negotiations and (2) in conversations pertaining to the usual and customary activities in regard to the potential implementation of any insurance plan about which the joint Insurance Committee had made a recommendation to Educators and/or to the teachers. In other words, the parties continued to communicate with each other, pursuant to their long-established procedure, about conducting a teacher vote on whether: (1) to adopt the joint Insurance Committee's recommended partially self insured plan or (2) to renew the Anthem plan.

From December 11 through December 19, 1997, Loveall communicated, on a number of occasions, with Stevens and O'Rourke concerning the vote of the teachers on the health insurance question. Educators was to conduct the teachers' vote. At no time during those conversations between Educators and the School Corporation did Educators state to the School Corporation that Educators did not want to conduct the teachers' vote on the health plans recommended by the joint Insurance Committee.

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[26] Tom Stewart -- a School Board member from 1994 through 1998, and a member of the joint Insurance Committee in December, 1997 -- would have voted against the partially self-insured plan at the December 19, 1997, School Board meeting if the teachers had not voted for the plan. Instead, he would have voted to renew the Anthem policy.

Edward Armantrout -- a School Board member from 1994 through 1998 and a member of the joint Insurance Committee from 1994 through November, 1997 -- firmly believed that the School Board's longestablished past practice was to change an insurance plan of the teachers only in instances wherein the teachers had already expressed their desire to have the Board do so. Thus, it can be inferred that if the teachers had not voted to change to the partially self-insured plan, Armantrout would have voted at the Board meeting on December 19, 1997, to continue the existing Anthem plan.

Tom Riegle -- a School Board member who was on the joint Insurance Committee from 1994 through 1998 -- was very glad the teachers voted to change to the partially self-insured plan. He was uncertain as to whether he would have voted to renew the Anthem policy if the teachers had rejected the partially self-insured plan. It can be inferred that Riegle's concern was that there would be no funds for a meaningful salary raise if the Anthem policy were renewed. Without a meaningful raise, Riegle knew the likelihood of achieving a settlement within the foreseeable future was slim.

56. At the hearing, O'Rourke's reaction to the dearth of serious bids being presented by Lothamer, at the December 11, 1997, meeting, was that ". . . if [potential bidders] kept saying no, then maybe we ought to get more.... So maybe we weren't getting the best bids." However, *no evidence exists* which shows that O'Rourke, or anyone else from Educators, asked the School Corporation to delay the teacher vote and secure additional bids, which the School Corporation would have received sometime in mid-January, 1998, after the Anthem policy would have lapsed. Apparently, Educators *complained about the alleged lack of bids only after it, in effect, had secured the teachers' salary increase*, when the School Board voted on December 19, 1997, to adopt the teachers' decision to switch to a partially self-insured plan. Earlier that same day, the teachers had voted to change to such a plan.

57. O'Rourke maintained that the School Corporation did -not afford Educators the appropriate amount of time in which to arrive at a wise decision concerning the health insurance issue. In particular, he expressed his perception that the School Corporation had used the *upcoming lapse* of the Anthem policy, on or about December 31, 1997, to *allegedly manipulate* Educators into accepting the joint Insurance Committee's recommended health plan, which Educators would have allegedly rejected if it had had additional time to seek additional bids and review additional alternatives.

58. At no time after the December 11, 1997, meeting and prior to the conclusion of the teacher vote on December 19, 1997, did Educators ask the School Corporation to abandon the continuing School Corporation and teacher activity pursuant to the parties' long-standing modus operandi of the joint Insurance Committee regarding the potential change in the teachers' health plan and the teacher salary raise, which would accompany such a change in the health plan.

59. At no time in December, 1997, did Educators ask the School Corporation to extend the Anthem policy on a month-to-month basis to provide Educators additional time to make a decision as to whether to change to a partially self-insured plan. Anthem did not charge a premium for extending a plan on a month-to-month basis. However, Anthem did require a 30-day notice to cancel such an extension.

60. The evidence shows that on Friday, December 19, 1997, Educators conducted a teacher vote to determine whether the teachers wished to change from their Anthem plan to a partially self-insured plan (with the savings in the cost of the Anthem premium being used for teacher salary increases). After school on Friday, December 19, 1997, Stevens and Gary Crow, a member of Educators' Insurance Committee, reported to Loveall that the vote of the teachers indicated they preferred the partially self-insured plan, accompanied by salary increases.

61. From the convening of the joint Insurance Committee on October 28, 1997, through the School Board vote on December 19, 1997, to adopt the teachers' decision to change from the Anthem plan to a partially self-insured plan, Educators did not object to carrying out a teacher vote on the joint Insurance Committee's recommendation that the teachers consider changing to a partially self-insured health plan (and use the savings therefrom to increase salaries). Instead,

Educators *itself* conducted a teachers' vote on whether the teachers wished to continue the former Anthem plan or whether they wished to change to a partially self-insured plan, accompanied by a salary increase. *The procedure followed in regard to a potential change in the health insurance plan was the same procedure the joint Insurance Committee, the School Corporation, Educators, and the teachers had followed in the past concerning any potential change in any insurance plan*. That procedure had been followed since approximately 1982-83.

During a period commencing on December 11, 1997, and terminating on December 19, 1997, Educators did state that it wanted to bargain the insurance plan. However, at no relevant time did Educators ever state that it did not wish to follow the joint Insurance Committee's long-established procedure so that the health plan could be addressed *exclusively in negotiations*. However, a few leaders of Educators were not necessarily enthusiastic about conducting the teacher vote.

62. The evidence herein does not demonstrate with precision what Educators did, in every instance, in regard to gathering teacher input on joint Insurance Committee recommendations which had been presented to officials of Educators to explain to their teachers. For example, in some instances, Educators conducted a teacher vote on the insurance plan change recommended by the joint Insurance Committee. Apparently, in some other instances, there was no such teacher vote. How such teacher input was acquired by Educators was entirely a decision to be made by Educators. The result of such teacher input was later forwarded by Educators to the School Corporation for implementation of the teachers' wishes.

First, under the past practice, the School Corporation did not concern itself with or play any role in determining how Educators obtained such teacher input. Specifically, the School Corporation did not care: (1) how Educators obtained such input and/or (2) what specific information Educators compiled from such input. Second, Educators alone determined what the teachers were to be told about any given recommendation of the joint Insurance Committee. Additionally, Educators framed the question on which the teachers were to vote. Third, after obtaining such teacher input, Educators then reported to the School Corporation what Educators perceived to be the results of the teachers' input. Fourth, the School Corporation did not ever question whether Educators correctly perceived what the teachers' wishes, in fact, were.

63. Instead, under the past practice, the School Corporation simply implemented Educators' articulated perception as to what the teachers' wishes were regarding the joint Insurance Committee's recommendation. The evidence presented an excellent example of that particular aspect of the past practice. Subsequent to April, 1997, the joint Insurance Committee recommended that the teachers change from Dental Guard insurance to a new plan of benefits and coverages offered by a specific carrier. The purpose of the recommendation was to obtain almost identical benefits and coverages while realizing savings which could be used to increase teacher salaries by approximately V2%. From the evidence it appears that Loveall's offer to Educators to use the savings to increase teacher salaries was never communicated by Educators to the teachers for their consideration and determination. Apparently, Educators simply exercised its discretion to obtain from the teachers whatever input Educators deemed appropriate.

64. Under the past practice, as a general rule, the teachers voted on whether to accept or reject any joint Insurance Committee recommendation which was submitted to them. Furthermore, as a general rule, joint Insurance Committee recommendations contained the substance of the recommended new plan and *the identity of the recommended new carrier*. For example, in April, 1997, the joint Insurance Committee recommended that the teachers change their dental insurance from a plan offered by Accordia to a new, more generous plan offered by Dental Guard. In that instance, Educators initially provided the teachers with the Dental Guard plan and then asked the teachers if they wished to change from Accordia to Dental Guard. Similarly, in the fall of 1995, the joint Insurance Committee recommended that the teachers switch their health insurance from Accordia to the East Central Indiana Medical Trust. There, Educators submitted that precise question to the teachers who voted not to change the existing plan and carrier. Thus, in most instances, Educators actually provided the teachers with the opportunity to vote on whether to accept or reject the new plan and *carrier* which the joint Insurance Committee had recommended.

As noted above, all partially self-insured plans have two component parts: (1) a third-party administrator to oversee the daily operation of such a plan and (2) a stop loss carrier to take over and assume the risk of paying all claims in excess of certain stipulated amounts. In the present case, the joint Insurance Committee recommended Delaware Benefits to be the third-party administrator. See Findings and Conclusions of Fact 43 and 44. The joint Insurance Committee also recommended American United to be the stop loss carrier. See Findings and Conclusions of Fact 42 and 45.

In regard to the joint Insurance Committee's recommended third-party administrator, the factual situation herein was analogous to most of the other factual situations with which the parties have dealt under the past practice. Specifically, the Joint Insurance Committee provided Educators with the name of the recommended provider. At that point, under the past practice, it was within Educators' discretion to decide whether to tell the teachers about that provider and whether to conduct a teacher vote on accepting or rejecting that particular provider.

In this case, the evidence shows that Educators was afforded the opportunity to permit the teachers to vote on whether to accept or reject Delaware Benefits as the third-party administrator. However, Educators chose not to afford the teachers an opportunity to vote on the question of the third-party administrator.[27]

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[27] Educators did not mention Delaware Benefits on the teachers' ballot. Similarly, on the teachers' ballot, Educators did not refer to the American United plan on which the joint Insurance Committee had formed a consensus. Educators noted on the ballot only that the health plan benefits of the American United plan were identical to Anthem's, Continental's, and American Fidelity's. Educators did state on the ballot that American United, Continental, and American Fidelity were strong, reliable companies which had submitted bids to provide the potential alternative health plan. Anthem, of course, was the existing health plan. Educators did not inform the teachers on the ballot that the health plan, recommended by the joint Insurance Committee, would be a partially selfinsured plan.

Educators, on the ballot, identified for the teachers the question before them. The ballot correctly stated that the teachers could receive their 1998 health insurance through one of the two available health plans. In the first alternative, the teachers could "[s]tay with [the] current carrier [Anthem]" where ". . . the rates [the teachers would pay on their 22-1/2% portion of the premium] will increase 28% effective 1Jan[uary] [19]98...." The second alternative was that the teachers could "[c]hange carriers;" and if they did, "... [a]ccording to the board and the superintendent, [the] saving [from having no increase in the cost of the Anthem premiums] would go

65. However, the factual situation herein is arguably different from past factual situations in regard to whether the joint Insurance Committee's recommendation to Educators and to its Insurance Committee identified the specific insurance company which would be the stop loss carrier. For two reasons, it can be inferred that Educators had reason to believe, and later perhaps did believe, that it and the teachers could not participate in a direct vote to determine whether the teachers wished to accept or reject a particular designated carrier to provide stop loss coverage for the partially self-insured plan.

First, because of the argument on December 11, 1997, which Educators had had with the School Corporation about Educators' participation in the selection of the health insurance carrier, Educators could have reasonably concluded that the School Corporation would not permit Educators and the teachers to directly participate in selecting the carrier. Second, because Educators listed all three of the carriers -- which the joint Insurance Committee considered -- on its ballot rather than simply listing American United, the carrier recommended by the joint Insurance Committee, one can reasonably infer that the School Corporation may have led Educators to believe that the teachers should not vote on the identity of the stop loss carrier. On the other hand, one can alternatively and reasonably infer from the express language on the teacher's ballot, that Educators simply did not care which company was the stop loss carrier. Nonetheless, the important fact is that the School Corporation may have misled Educators about the selection of that carrier.

66. Conversely, it is absolutely clear that the joint Insurance Committee recommended to Educators and to its Insurance Committee a plan of benefits and coverages which were to be identical to those in the American United plan. Educators was present when the joint Insurance Committee selected and recommended that plan of benefits and coverages which was to be identical to American United's.

One of two reasons the joint Insurance Committee recommended a plan identical to American United's was because any plan identical to American United's would contain a unique provision concerning specific and aggregate stop loss amounts. Moreover, that the joint Insurance Committee specifically indicated to Educators that the recommended plan was to be one which would be identical to that which was offered by American United demonstrates that in regard to the content of the recommended plan, the joint Insurance Committee and the School Corporation complied with the past practice of informing Educators as to the precise content of the recommended plan. By so informing Educators, the joint Insurance Committee and the School Corporation afforded Educators the opportunity to permit the teachers to vote on whether to accept or reject a plan of benefits and coverages identical to American United's.

67. Additionally, Educators knew that all three carriers -- American United, Continental, and American Fidelity, which were considered by the joint Insurance Committee -- provided plans

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to teachers salaries."

with benefits almost identical to those in the Anthem plan. More importantly, Educators also knew that only American United's plan of coverages contained a unique provision on specific and aggregate stop loss amounts. Furthermore, Educators knew that the joint Insurance Committee's decision to recommend a plan of benefits and coverages identical to American United's was based, in large measure, on the American United's unique policy provision on specific and aggregate stop loss amounts.

In view of the above-mentioned facts, Educators would have known that American United was the only one of the three carriers, considered by the parties, which could provide a policy containing the plan of coverage provisions recommended by the joint Insurance Committee: that is, a policy containing coverage provisions identical to those offered by American United. In other words, if the teachers wanted to change to a partially self-insured plan, Educators would have known that the only carrier which could provide the plan of coverages recommended by the joint Insurance Committee was American United.

68. Therefore, in this case, the joint Insurance Committee and the School Corporation afforded Educators with the opportunity to allow the teachers *to vote on whether to accept or reject the particular carrier*, American United, which was to provide the joint Insurance Committee's recommended plan of benefits and coverages, including the unique provision on specific and aggregate stop loss amounts. In so affording Educators that opportunity, the joint Insurance Committee and the School Corporation complied with the past practice. However, Educators chose not to afford the teachers the opportunity to vote on American United as the stop loss carrier.

69. At no time after the School Board acted on teacher health insurance on December 19, 1997, and prior to or during the January 22, 1998, mediation session -- at which the parties tentatively agreed on a 1997-98 contract -- did Educators ask the School Corporation to rescind its contracts with Delaware Benefits and American United and to also reinstate on a month-to-month basis the Anthem policy until the parties had completed bargaining on the health insurance plan. Incorporated into that tentative agreement was the partially self-insured plan and the teacher salary raise which was principally funded with the savings which arose from the lower cost of the premiums for the partially self-insured plan. Similarly, Educators did not seek rescission of those School Corporation contracts with Delaware Benefits and American United as a remedy in this unfair practice proceeding.

70. Educators filed the Complaint in this unfair practice case on January 15, 1998.

71. At the January 22, 1998, mediation session, Educators proposed that if the School Corporation would agree to bargain the carrier in the future, Educators would withdraw its Complaint in this case. The School Corporation did not accept Educators' proposal. At that time, the parties understood that Educators would continue to prosecute its Complaint.

ISSUES

I. Did the School Corporation fail to bargain in good faith at the table and thereby violate the Act?

II. Did the School Corporation make an illegal unilateral change in the teachers' health plan and thereby violate the Act?

DISCUSSION

ISSUE I

In Issue I, the question presented is whether the School Corporation engaged in bad faith bargaining at the table. It is true, as Educators alleges, that from July 31, 1997, through January 22, 1998, the School Corporation did not agree to proposals tendered by Educators on health insurance and on a teacher salary increase. However, Educators' bad faith bargaining claim is based on its incorrect belief that the School Corporation had a duty to affirmatively respond to Educators' health insurance and salary proposals. The Act expressly provides that the School Corporation had no such duty to respond affirmatively to those proposals, stating: "The obligation to bargain collectively does not require the school employer or the exclusive representative to agree to a proposal of the other or to make a concession to the other." Section 2(n) of the Act.

Under the case law, IEERB will look to the "totality of the [bargaining] conduct" to determine whether a party's bargaining activity, when considered as a whole, constituted a pattern of behavior from which one may reasonably infer that that party, who allegedly violated the Act, intended to prevent the parties from attaining a negotiated agreement. *See* Monroe-Gregg School District, U-85-15-5900, 1986 IEERB Ann. Rep. 138, 139-140 (1986); New Prairie United School Corporation, U-83-41-4805, 1983 IEERB Ann. Rep. 205, 208 (1984). Here, the evidence shows that the School Corporation made a diligent, prolonged effort to engage in meaningful deliberations, during the parties' negotiations, which would ultimately lead to an agreement.

In particular, three findings establish that the School Corporation did engage in meaningful bargaining conduct which was intended to lead to a settlement. First, for many months the School Corporation resisted Educators' health insurance and salary demands. On the other hand, as soon as the School Corporation was in a position to do so, it offered Educators: (1) health benefits almost identical to Anthem's and (2) a meaningful salary increase. The School Corporation's ability to fund its ultimate offer to Educators arose as a result of the School Corporation's persistent efforts to not incur a substantial increase in the cost of the teachers' health insurance premiums.

Additionally, throughout the negotiations, the School Corporation pledged to appropriate all savings, occurring from no increased cost in premiums, to teacher salaries. Second, when the School Corporation discovered, some time in the late fall of 1997, that an overcharge of approximately $50,000 had been made by the special education cooperative, it indicated its willingness to ultimately appropriate those funds also to teacher salaries. Thus, *through School Corporation action*, funds were freed up and allocated to teacher salary increases. Third, during the many months while a bargaining stalemate existed on the issues of health insurance and a salary increase, the School Corporation participated in four negotiation sessions and three mediation sessions which dealt, in part, with other bargaining subjects. During the four negotiation sessions, the School Corporation responded to bargaining proposals from Educators which addressed other subjects. The parties tentatively agreed to several items: for example, two days of union leave for Educators. Additionally, the parties tentatively agreed to some changes in the contract's language and format. *See* Findings and Conclusions of Fact 7 through 17.

In sum, the evidence unequivocally shows that, throughout the negotiations, the School Corporation's conduct, when viewed in its totality pursuant to Monroe-Gregg and New Prairie, constituted good faith bargaining. In Issue I, the School Corporation did not violate the Act and, thus, did not commit an unfair practice.

ISSUE II

In Issue II, the question presented is whether the School Corporation unilaterally changed the teachers' health insurance plan. Although Educators' Complaint argues only that the School Corporation purportedly made a unilateral change in the health plan, much of the evidence adduced by Educators at the hearing, as well as much of the emphasis of Educators' pre- and post-hearing briefs, was designed to establish that the School Corporation had a contractual obligation to bargain both the selection of the health insurance plan and the selection of the carrier. Educators then argues that the School Corporation failed to fulfill both of those obligations.

As a result of Educators' decision to rely on the School Corporation's alleged failure to fulfill its purported contractual obligations, the discussion section addressing Issue II will be divided into three Parts. Part 1 will address the question of whether the School Corporation failed to fulfill a contractual obligation which it allegedly had to bargain the selection of the health insurance carrier. Part 2 will apply three legal theories respectively to the question of whether the School Corporation made the alleged unilateral change in the teachers' health plan. Part 3 will thoroughly analyze the factual situation to determine whether any act and/or omission by the School Corporation deprived Educators of its right or opportunity to bargain the health plan.

ISSUE II

Part I

Much of the evidence presented in Educators' case-in-chief was intended to show that the School Corporation had an alleged contractual obligation to bargain the selection of the health

insurance carrier. Educators insists that there should flow from this unfair practice proceeding a legal determination that the School Corporation had such a legal obligation, that the School Corporation failed to fulfill that obligation, and that the School Corporation must bargain the carrier in the future pursuant to that alleged contractual obligation.

Educators bases that particular, individual contractual claim on an alleged grant of authority to the Teachers' Organization which first appeared in the parties' 1982-83 contract. In 1982, the parties revised their contractual language so as to unambiguously state who would select the health plan. The prior contractual language had expressly granted the authority to select the insurance company exclusively to the School Corporation. Additionally, that prior contractual language was ambiguous as to who would select the health plan in that it provided: ". . . [the teachers could participate] in the *school corporation's* group medical insurance *plan*." (emphasis added) That the parties' 1981-82 contract included both the term "insurance company" and the term "plan" is noteworthy. The contractual language in effect prior to the 1982 revision clearly shows that the former negotiators understood and noted that two legal concepts are involved in the procurement of health insurance coverage--that is, the plan of benefits and the designation of the insurance company who will provide such a plan of benefits.

Educators' contractual claim is based on its interpretation of the 1982 revision in the contract. That revision stated: "The plan shall be agreed upon by the Board and the [Teachers' Organization]." Educators argues that the intent of the negotiators in 1982 was for the term "plan" to mean -- in addition to "plan" -- "carrier," "insurance consultant," and "anything else pertaining to health insurance." Therefore, Educators further argues that, in 1997-98, the School Corporation had a contractual obligation to bargain the selection of the carrier, pursuant to the 1982 contractual revision which was carried forward into the 1995-97 contract.

The 1982 revision deleted the former reference to the term "insurance company." In other words, the 1982-83 contract did not expressly address who would select the carrier. However, Educators' claim is solely a contractual one; that is, Educators does not claim that the School Corporation has a statutory obligation pursuant to the Act to bargain the carrier.

The findings in this case demonstrate conclusively that under the long-established past practice, Educators, as the exclusive teachers' organization, was afforded the opportunity to accept or reject the joint Insurance Committee's recommended third-party administrator (which would be essential to the implementation of any partially self-insured plan). Additionally, the findings demonstrate conclusively that Educators itself was afforded the opportunity to accept or reject the joint Insurance Committee's recommended plan of benefits and coverages, which would be provided by a stop loss carrier. Such a plan of benefits and coverages provided by a stop loss carrier would be essential to the implementation of any partially self-insured plan. Moreover, since only one of the three available stop loss carriers could provide the joint Insurance Committee's recommended plan of benefits and coverages, Educators knew which insurance company would be the stop loss carrier; that is, Educators knew American United would be the carrier. See Findings and Conclusions of Fact 61 through 68.

Therefore, the evidence unequivocally shows that under the past practice Educators itself, as the exclusive teachers' organization, was afforded the opportunity to accept or reject American United as the stop loss carrier. Finally, since Educators was afforded the opportunity by the joint Insurance Committee and by the School Corporation to accept or reject the stop loss carrier, determining herein whether the School Corporation had a contractual obligation to bargain the carrier is unnecessary. That Educators declined to exercise its alleged right to "agree on" (or not "agree on") American United as the stop loss carrier is not relevant to the outcome in Part I of Issue II.

Additionally, for four unrelated reasons, any court, pursuant to Section 7(c) of the Act, or administrative law judge under the Act would probably reject on the merits Educators' claim that the School Corporation had a contractual obligation to bargain the selection of the carrier (or that Educators had a contractual right to do so). First, if one reviews the factual situation out of which the parties' 1982 dispute over the carrier arose, the 1982 revision to the contract clearly resolved that dispute without expressly affording Educators the right to bargain the selection of the carrier. Such effective resolution of the health insurance issue occurred even though the School Corporation, in fact, did not subsequently bargain the carrier for a 14-year period.

At the hearing, Goodwin correctly explained that the dispute arose in 1982 because under the 1981-82 contract the School Corporation could select the carrier and that, in the then-existing uncompetitive insurance market, each carrier would only offer its own distinct plan. Thus, when the School Corporation selected the carrier,' it, in effect, also selected the plan because the carrier which the School Corporation had chosen would then not agree to offer any provisions other than those in the carrier's own uniquely distinct plan.

Under the 1982 revision to the contract, the parties were required to "agree on" the plan. Even though the School Corporation could then theoretically still select the carrier, the School Corporation, in fact, had to select the only carrier in the then-existing uncompetitive insurance market which would offer the plan agreed on by the parties. Since only one carrier would be willing to offer the distinct plan upon which the parties had agreed, the School Corporation under the 1982 revision could not choose any other carrier. Thus, the express revision to the contract in 1982 permitting the Teachers' Organization to "agree on" the health plan effectively addressed and resolved the problem which Goodwin explained had existed under the 1981-82 contract; that is, formerly, the superintendent, when exercising the School Corporation's right to select the carrier, also effectively chose the plan without input from the Teachers' Organization.

The fact that the parties amicably bargained the health insurance plan from 1982-83 through 1995-97 supports the conclusion that granting to the Teachers' Organization the right to bargain the plan resolved the problem with which the Teachers' Organization was confronted in 1981-82. Since the 1982 revision resolved the 1982 concerns of the Teachers' Organization, it is unlikely that the School Corporation would have conceded to the Teachers' Organization, in the 1982-83 negotiations, more than was necessary to settle that particular dispute. In other words, since the 1982 revision would solve the teachers' concerns, the School Corporation would not have had to even

consider granting to the Teachers' Organization the contractual right to bargain the carrier. Goodwin's own testimony substantiates how intent the School Corporation was on attempting to preserve unto itself, at least, an alleged statutory right to select the carrier.

Second, by resorting to any dictionary in common usage (including *Black's Law Dictionary*), one will find that the term "plan" is not defined so as to mean "carrier." Therefore, if the parties had intended for the term "plan" to mean "carrier" in their contract, they would have expressly defined the term "plan" to mean both "plan" and "carrier" in regard to the parties' negotiations. Since the parties did not so define the term "plan," one can reasonably conclude that they did not intend for the term "plan" to also mean "carrier."

Third, at the hearing, Goodwin observed that in the health insurance negotiations in the early 1980's, school attorneys and school negotiators labored to deny teacher unions the right to bargain the health insurance carrier. On the other hand, Goodwin argued that those school attorneys and other school negotiators used the term "plan" to refer to insurance companies. The case law existing in 1982 belies Goodwin's argument. An examination of the case law existing at that time demonstrates that, in those respective cases, the courts and the practitioners articulated a clear distinction between two legal concepts: (1) a "plan" which was a list of benefits provided by an insurance company and (2) a "carrier" which was an insurance company which would deliver the benefits, listed in its plan, to the insureds.[28]

Fourth, in one instance, the parties actually intended to grant the right to one party to select the carrier;[29] in a second instance, they actually intended to assure that both parties participated in

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[28] Such attorneys and negotiators relied on the following cases to resolve disputes concerning whether employers had to bargain the selection of the carrier:

1. Bastian-Blessing v. NLRB, 474 F.2d 49, 82 LRRM 2689 (6th Cir. 1973);
2. Connecticut Light and Power Company v. NLRB, 476 F.2d 1079, 82 LRRM 3121 (2nd Cir. 1973);
3. Keystone Consolidated Industries v. NLRB, 606 F.2d 17, 102 LRRM 2664 (7th Cir. 1979);
4. HLEA v. Houghton Lake Board of Education, 109 Mich. App. 1, _ N. W. 2d _ (1981);
5. Evansville- Vanderburgh School Corporation, U-79-15-7995, 1979 IEERB Ann. Rep. 298 (1979), *aff'd* by Board, 1980 IEERB Ann. Rep. 7 (1980); and
6. Chemical Workers v. Pittsburgh Plate Glass Company, 404 U.S. 157, 78 LRRM 2974 (1971).

The legal discussion in each of the above-mentioned cases assumed the existence of two insurance concepts:

(1) a carrier who provided insurance and

(2) a plan which spelled out the benefits and coverages that a given carrier would provide.

The cases concerned themselves with the complex situations which arose when one of those two concepts overlapped the other. Such overlap occurred because, in many instances, the two insurance concepts were inherently intertwined.

At the hearing, Goodwin testified that the parties had no reason to define the term "plan" in the 1982-83 contract "because at that particular time the language that was being used by everybody talking about insurance was [the term `plan'] . . . `plan' meant the whole ball of wax." Later, he further testified that the term ". . . `[p]lan' meant the whole shebang, the whole thing, because we didn't even -- `carrier' was a word that was not even bandied about ...." (emphasis added)

[29] *See* Finding and Conclusion of Fact 20.

the selection of the provider.[30] In neither of those two situations did the parties themselves invoke the term "plan" to refer to an insurance company. Instead, in both situations, wherein the parties themselves actually intended for a certain party or both parties to select an insurance company, they used either the word "carrier" or "insurance company" to mean (or refer to) an insurance company. Thus, the evidence shows that in instances wherein the parties really were referring to an insurance company through their express contractual language, they did not use the word "plan." Instead, they said "carrier" or "insurance company."

To summarize, the findings show that, under the past practice, Educators itself, as the exclusive teachers' organization, was afforded the right to accept or reject: (1) American United, the stop loss carrier; (2) Delaware Benefits, the third-party administrator; and/or (3) the entire concept of a partially self-insured plan. Therefore, we need not determine herein whether Educators had a contractual right to bargain the selection of the carrier. As noted, that Educators chose not to exercise its right to accept or reject the stop loss carrier, the third-party administrator, and/or the partially self-insured plan is not relevant to the outcome of this case. Finally, Educators, under its By-Laws,[31] permitted the teachers to decide whether to accept or reject the partially self-insured plan. Since American United was to provide the benefits and coverages under that plan, the teachers, in effect, voted to accept American United as the stop loss carrier. In Part 1 of Issue II, the School Corporation did not violate the Act and, thus, did not commit an unfair practice.

ISSUE II

Part 2, Legal Theory I

In Part 2 of Issue II the question is whether the School Corporation unilaterally changed the teachers' health plan and thereby violated the Act. The focus here is on whether any one of or any

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[30] See Finding and Conclusion of Fact 29.

[31] Article II, Section 3 of Educators' By-Laws stated:

Article II
Philosophy
* * *
Goals
* * *

Section 3 To involve *all teachers in the decision-making process*, both members and nonmembers.

Article VIII, Section 2 of Educators' By-Laws stated:

Article VIII
Business Affairs of the Organization
* * *

Section 2. Upon the Governing Board shall rest the duties, responsibilities, and final authority for the conduct of the organization in all matters except as stated otherwise in the By-Laws, *provided that they may, at any time, refer any matter to the entire membership for general consideration*, with the Governing Board prescribing the matter of voting thereon.

(emphasis added)

combination of three particular legal theories -- any one of which would insulate the School Corporation from liability herein -- are applicable in this case. In comprehending why any one of or all of those three legal theories may be applicable herein, revisiting certain portions of the evidence adduced from Goodwin is essential. Although Goodwin's testimony on matters which he perceived to be outcome determinative in this case was not credible, his overview of the forces in play within the school community in the fall of 1982 and of the customary business practices in the public school insurance industry at that time were insightful.

For example, Goodwin explained that in 1982 a new superintendent arrived at the School Corporation at approximately the time school began. At that time, the initial activities of a union job action were in progress. To foster amicable relations, the new superintendent provided the teachers with generous health insurance benefits. As a result, the School Corporation expended $30,000 in 1981-82 in excess of its 1982 appropriation for teacher health insurance costs.[32]

Thus, as the parties embarked on their 1982-83 negotiations, the School Corporation was in a weakened financial position. Goodwin realized that the School Corporation's weakened fiscal status could be utilized to substantially bolster his and the Teachers' Organizations' bargaining position *if* they designed a bargaining strategy which would effectively capitalize upon the School Corporation's fiscal problems and yet simultaneously allow the School Corporation to represent to the public that it had successfully completed negotiations and had maintained its fiscal integrity. Within those confines, Goodwin conceived a strategy which focused not on salary increases but rather on extracting procedural negotiating concessions from the School Corporation which would be useful to the Teachers' Organization for years to come.

Goodwin's strategic plan was based on a compromise which, on the one hand, called for the teachers to assist the School Corporation with its fiscal dilemma. In exchange, Goodwin demanded that the School Corporation *expressly* grant to the Teachers' Organization the contractual authority to bargain the health plan. Because of his familiarity with teacher insurance coverages and his longtime participation in union activities,[33] Goodwin would have had a general understanding that the compromise may not have *directly* conferred on the Teachers' Organization the contractual right to bargain the carrier. However, Goodwin intuitively knew that, if he and the Teachers' Organization could obtain the authority to bargain the health plan at that particular time, they also could, in effect, control which carrier would provide the teachers' health plan. The reason was, as Goodwin's own testimony demonstrated, in the uncompetitive insurance market which existed in 1982, if an exclusive teachers' organization could bargain the plan, it also could effectively determine who the carrier would be because only one insurance company would be willing to provide the plan which the parties had chosen when bargaining the plan.

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[32] The transcript is unclear as to whether the School Corporation actually spend $30,000 in excess of the appropriated amount or whether the cost of the following year's premiums would be $30,000 more than anticipated.

[33] *See, e.g.*, Chris L. Goodwin and Board of School Trustees of the Northwestern School Corporation of Henry County, U-75-61-3435, 1975-76 IEERB Ann. Rep. 851 (1975), *aff'd* by Board, 1976-77 IEERB Ann. Rep. 554 (1976).

Second, in the 1982-83 negotiations or within a relatively short period thereafter,[34] Goodwin and/or a coterie of leaders from the Teachers' Organization entered into an oral agreement with the School Corporation to relegate the bargaining function as it pertained to the teachers' health insurance plan[35] to a free-wheeling forum comprised of a few union leaders and the superintendent: the joint Insurance Committee.[36] From his bargaining experience, Goodwin would have realized that occasionally school corporation administrators and ardent teacher advocates may more readily reach agreement on divisive, complex issues in a non-adversarial setting than in a contentious, unionversus-school corporation atmosphere.

Within this free-wheeling forum the union president and/or a few union leaders met with the superintendent to research and evaluate health plans and finally to recommend changes in the health plans to the Teachers' Organization, which then decided whether to accept or reject those recommended changes made by the Committee. Ultimately, the Teachers' Organization communicated its decision to the superintendent for implementation, regardless of whether the Teachers' Organization had chosen to change plans or to retain the existing plan. The parties intended for the recommended changes to potentially afford additional benefits to the teachers.

Abundant evidence shows that, as a result of this relegation by the parties of the decision making regarding insurance plans to the procedure of the joint Insurance Committee, additional benefits inured to the Teachers' Organization and its teachers. *See* Findings and Conclusions of Fact 32, 33, 41, 42, 43, and 45. As suggested above, the procedure of the joint Insurance Committee afforded the Teachers' Organization the opportunity to participate in any benefit which would arise as a result of accepting any recommendation the Committee made. Conversely, the Teachers' Organization, under that Committee's procedure, could reject any recommended benefit. In instances wherein the teachers received an additional benefit, the School Corporation sought no *quid pro quo* from them.

That the joint Insurance Committee's procedure, as initially conceived and implemented, *did not require a single School Board member to consent* to a recommendation made by the joint

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[34] The transcript is silent as to when the parties created the joint Insurance Committee. However, the evidence shows that the procedures of the joint Insurance Committee were already well established when Secttor arrived at the School Corporation in 1988.

[35] Soon thereafter, the parties began dealing with all teacher insurance plans in the joint Insurance Committee.

[36] The transcript is silent as to which party originally proposed the establishment of the joint Insurance Committee. There is, however, little question but that the School Corporation would have been eager to participate in such a procedure. On the other hand, the procedure of the joint Insurance Committee was so advantageous to the Teachers' Organization, it is difficult to believe that it would have been originally designed by the School Corporation. Finally, the transcript demonstrates that Goodwin was the only witness for Educators who had the collective bargaining experience and the insurance expertise to have formulated the joint Insurance Committee procedure.

Insurance Committee[37] prior to the actual implementation of such a recommendation by the superintendent is of import. In its early years, the joint Insurance Committee made decisions recommending substantial School Corporation expenditures and significant changes in the School Corporation's health plan, without the participation of any School Board members.[38] *See* Finding and Conclusion of Fact 31.

Equally important, the Act's bargaining requirement provided the Teachers' Organization with a procedure through which the Teachers' Organization could have abandoned, at any time, the activities of the joint Insurance Committee by simply demanding that the School Corporation address all insurance plans exclusively in the negotiations forum. If the School Corporation declined to honor such a demand, the mere filing of a bargaining unfair practice claim might have induced the School Corporation to reverse its position.

In sum, the procedure of the joint Insurance Committee, as created and later refined, afforded the Teachers' Organization the opportunity from time to time to acquire additional teacher benefits. Moreover, the Act's bargaining requirement provided the Teachers' Organization with a procedure through which it could extricate itself at any time from the procedure of the joint Insurance Committee.

Here, the parties, through joint and mutual action over a period of at least 10 years, demonstrated that they had relegated their dealings over teacher insurance plans to a forum other than the negotiations committee; that is, the parties jointly chose to use the joint Insurance Committee to deal with teacher insurance plans. As a result of their long-established reliance on and participation in the procedure of the joint Insurance Committee to resolve all issues concerning teacher insurance plans, the parties developed and maintained what the law considers to be a "past practice." Based on the existence of a previously established practice, a Court may impose certain legal obligations on a party who inappropriately discontinues its participation in the past practice and thereby causes detriment to the other party who reasonably believed the past practice would continue.

The Indiana Court of Appeals first recognized and applied the legal concept of past practice to conduct under the Act in Union County School Corporation v. Indiana Education Employment Relations Board, 471 N.E.2d 1191, 1198-1199 (Ind. App. 1984). Therein, in 1976-77, the school corporation was closed for 18 days due to inclement weather. The school corporation paid the teachers for those missed days. Since the school corporation later required the teachers to make up three of those missed days, it issued supplemental contracts to pay the teachers extra for those three days.

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[37] Prior to July, 1994, no School Board members participated in the joint Insurance Committee's formulation, by consensus, of recommendations on insurance plans, which were then submitted to the Teachers' Organization.

[38] Note that the Teachers' Organization *may have more easily achieved some of its health plan priorities* under the joint Insurance Committee's initial procedure than under a more traditional one.

In 1977-78, the school was closed for 19 days due again to inclement weather. That school year the school corporation required the teachers to make up seven days for which they did not receive extra compensation. Neither the school corporation nor the exclusive teachers' organization initiated "discussion" concerning those 1977-78 make-up days. In April, 1979, the exclusive teachers' organization filed an unfair practice complaint alleging, among other things, that the school corporation had refused to "discuss" a change in the pay procedure for the make up of days in 197778 missed due to snow.

In its analysis of that "discussion" question, the Union County Court noted that it agreed with IEERB's finding that the scheduling of make-up days was a mandatory subject of "discussion." The Court made its own assumption that that IEERB decision in regard to the school corporation's *school calendar was within the meaning of the term "working conditions," which is a required subject of "discussion."

The school corporation defended its acts and/or omissions therein by contending that it had, in fact, never "refused"[39] to "discuss" that mandatory subject. The school corporation further contended that since it had not actually refused to "discuss" that subject and since the exclusive teachers' organization itself had not initiated "discussion" about those 1977-78 make-up days, the school corporation could not have violated the Act's charge to school corporations to "discuss" working conditions with the exclusive representative of the certificated employees. *See* Section 5(a)(1) of the Act; *see also* Sections 3, 7(a)(5), and 7(a)(6) of the Act.

The Court observed that the-school corporation's conclusion was ". . . tantamount to stating that an employer has no duty to initiate discussion on [any] issue." Id. at 1199. Citing Pace v. Caston School Corporation, Case No. U-79-28-2650, 1979 IEERB Ann. Rep. 276, the Court first acknowledged that in some factual situations school corporations have no duty to initiate "discussion." However, the Court then concluded that in many other instances, including Union County, school corporations do have a duty to initiate "discussion." Specifically, the Court held that in Union County, the school corporation had a duty in regard to the 1977-78 make-up days.

The Court's analysis in support of its conclusion above was based on the concept of past practice and the inferences which may be drawn in an instance wherein one party disengages from the parties' past practice and thereby injures the other party, who continued the past practice based on the reasonable belief that both parties would continue it. Here, the Court observed that since the school corporation paid the teachers extra for the make-up days in 1976-77, it was reasonable for the teachers to assume that they would be paid extra for make-up days in 1977-78. As a result of having justifiably relied on that 1976-77 past practice regarding extra pay, the teachers had no reason to seek

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[39] Section 7(a)(5) of the Act states:

> (a) It shall be an unfair practice for a school employer to:
>
> * * *
>
> (5) *refuse to* ... discuss with any exclusive representative as required by any provision of this chapter; ...
>
> (emphasis added)

"discussion" about that same subject in 1977-78. The Court conversely observed that the school corporation was aware that it did not intend to pay the teachers in 1977-78 for make-up days.

Confronted with those facts, the Court concluded that since the teachers had no knowledge of any impending change regarding extra pay for make-up days, timely "discussion" of such a change in the school corporation's extra-pay policy could have occurred only if the school corporation had initiated it. Therefore, the Union County Court held that the school corporation therein had failed (or "refused") to fulfill its statutory obligation to "discuss" those 1977-78 make-up days. Such a holding could have completed the Court's consideration of the extra-pay issue.

Instead, the Court chose to broaden its review of the issue and to determine whether it would be reasonable to consider awarding damages to the teachers because they had been precluded from exercising a substantial right. Because the teachers had relied on the 1976-77 past practice regarding extra pay and because the school corporation had been aware in 1977-78 that it intended to change its previous extra-pay policy, the Court reasoned that it could infer that if the parties had "discussed" the extra-pay issue, much of their exchange would have involved "whether the [school corporation] would have continued to pay the teachers for [make-up days]." Moreover, the Court opined that during such "discussion," the parties might well have agreed to continue the past practice. Id. at 1201. Thus, the Court ultimately remanded the case to the trial court for a determination as to whether an award of damages to the teachers would be appropriate.

The Union County case illustrates how flexibly the concept of past practice may be applied to prevent an injustice from occurring in an instance wherein one party inappropriately discontinues a past practice to the detriment of the other party who in good faith believed the past practice would continue. As a result of that flexibility, the concept of past practice may be applied in many other factual situations to prevent similar injustices. For example, in the present case, the concept of past practice could, perhaps, be invoked to resolve the parties' dispute over whether the School Corporation responded appropriately to Educators' request to pursue alternative conduct concerning the health plan and to Educators' specific conduct regarding the past practice.

Here, each party advanced its own interests by jointly following the procedure of the joint Insurance Committee over a substantial period. Educators, although claiming it wished to pursue alternative conduct concerning the health plan, nonetheless continued complying with the past practice to reap unusual health insurance and salary benefits. After securing those benefits, Educators disengaged from the past practice and filed an action against the School Corporation claiming that the School Corporation had illegally failed to respond *fully* to Educators' request to purportedly engage in meaningful and conclusive negotiations in regard to the health plan.

Throughout the period in question, the School Corporation was fully aware that if Educators stated that it wished to deal with the health plan *exclusively* in negotiations, the School Corporation had to do so. However, Educators did not ask to address the health plan solely in negotiations.

In Union County, the teachers' failure to initiate "discussion" in 1977-78 was occasioned by

the teachers' justifiable reliance on the school corporation's 1976-77 conduct in regard to extra pay. Herein, the School Corporation's continued performance of the past practice and its failure to respond fully to Educators' request to purportedly engage in determinative negotiations on the health plan were occasioned by the School Corporation's justifiable reliance on Educators' continued adherence to the past practice. In both instances, the concept of past practice may be applied to assure a just outcome.[40]

Here, following Educators' request to purportedly engage in meaningful and conclusive negotiations about the health plan, the School Corporation carefully and continuously evaluated Educators' conduct and then responded accordingly. When Educators ceaselessly adhered to the past practice, the School Corporation continued its participation in the past practice in reliance on Educators' *actual* conduct.

Therefore, the School Corporation, in reliance on Educators' conduct, did nothing more than simply follow the procedure of the joint Insurance Committee, which comprised the past practice. Such School Corporation conduct could not have violated the Act and, thus, could not have constituted an unfair practice.

ISSUE II

Part 2, Legal Theory 2

The School Corporation correctly maintains that each of two additional legal theories prevents Educators from prevailing on its bargaining unfair practice claim alleging that the School Corporation unilaterally changed the teachers' health plan. First, the School Corporation contends that, under the doctrine of equitable estoppel, Educators is precluded from complaining about the

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[40] The IEERB has held that the existence of a past practice, which demonstrates the parties have chosen not to deal with a particular bargainable subject in the negotiations forum, may permit a school corporation to avoid a finding of unfair practice for allegedly having failed to negotiate that particular bargainable subject. *See* M.S.D. of Wayne Township, U-91-05-5375, 1991 IEERB Ann. Rep. 151, 165-166 (1991). In Wayne Township, the parties' existing practice required teacher attendance at meetings held outside of the normal school day. The parties' contract did not define the term "hours." Additionally, no proposals concerning the definition of "hours" had been made during that year's negotiations.

First, the hearing examiner inferred that the exclusive teachers' organization's intent was not to bargain the teachers' "hours" but rather to prevent the teachers from having to attend a meeting about the school corporation's adverse financial situation. Then, since the exclusive teachers' organization was not attempting to bargain hours, the hearing examiner found that the then-existing state of affairs between the parties continued to include their longestablished practice of requiring teacher attendance at meetings outside of the normal school day. Therefore, she reasoned that the school corporation, by requiring the teachers to attend that meeting, was merely continuing the parties' past practice rather than unilaterally implementing a change in a bargainable subject. Such school corporation conduct, the hearing examiner ultimately concluded, could not have constituted an unfair practice.

Wayne Township is of assistance herein in that it illustrates that the IEERB has previously invoked the concept of past practice in resolving an unfair practice dispute. On the other hand, since the facts in Wayne Township differ substantially from those in the present case, the precedent established in Wayne Township will not support the outcome in the present case. Only the analysis above, which invokes the general concept of past practice as set forth in Union County, will support the determination made here in Part 2 of Issue II.

change in the teachers' health plan because the School Corporation's conduct herein was occasioned by its reliance on the actions of Educators and the teachers concerning a change in health plans. Specifically, in the present case, subsequent to Educators' request to purportedly engage in meaningful and determinative negotiations about the health plan, the School Corporation carefully observed Educators' conduct to discern whether Educators, in fact, wanted to address the health plan exclusively in negotiations. When Educators did not insist on dealing with the health plan solely in negotiations and when Educators fully adhered to the past practice, the School Corporation continued its participation in the past practice in reliance on Educators' actual conduct.

The School Corporation observes that in Shenandoah School Corporation, U-91-08-3435, 1991 IEERB Ann. Rep. 116 (1991), the hearing examiner set out the elements of equitable estoppel:

(1) a representation or concealment of material fact;
(2) the representation must have been made with knowledge of the facts;
(3) the party to whom it was made must have been ignorant of the matter;
(4) it must have been made with the intention that the other party should act upon it;
(5) the other party must have been induced to act upon it.

Id. at 134-135 (*quoting* National Salvage and Service Corporation v. Commissioner of the Indiana Department of Environmental Management, 571 N.E.2d 548 (Ind. App. 1991), *trans. denied, cert. denied* 506 U.S. 871 (1992)). In Shenandoah, the hearing examiner further stated: "When there is no evidence of a representation or concealment of material facts, the prevailing law in Indiana is: `silence and acquiescence, when good faith requires a person to act or speak, will satisfy the first element of equitable estoppel.'" 1991 IEERB Ann. Rep. at 135 (*quoting* Warner v. Riddell National Bank, 482 N.E.2d 772, 775 (Ind. App. 1985)).

Here, after school on December 19, 1997, Educators communicated to the School Corporation, pursuant to the long-established practice of the joint Insurance Committee, that the teachers had expressed their decision through a vote to change health plans. At 5:00 p.m. that day, the School Board met. In reliance on Educators' communication about the teacher vote, the School Board unanimously adopted the teachers' decision to change health plans and then directed the .superintendent to implement that change.

The transcript of the proceedings is replete with evidence showing that if the teachers had voted to retain the existing Anthem policy, the superintendent would have strongly recommended the renewal of the Anthem policy to the School Board, which would have renewed that existing policy. *See* Findings and Conclusions of Fact 33 and 54. Conversely, no evidence even intimates that the School Corporation would not have adopted and implemented the teachers' December 19, 1997, decision regarding the recommended change in the health plan if the teachers had voted to retain the existing plan.

Therefore, since the School Corporation relied on Educators' representation that the teachers wished to change health plans, Educators is estopped from prevailing on its claim alleging that the

School Corporation unilaterally changed the teachers' health plan. In Part 2 of Issue II, under the doctrine of equitable estoppel, the School Corporation did not violate the Act and, thus, did not commit an unfair practice.

ISSUE II

Part 2, Legal Theory 3

Second, the School Corporation also correctly contends that Educators waived its right to complain that the change in the health plan was not bargained. Such a waiver occurred, as the School Corporation explains, because Educators acquiesced in the parties' past practice of dealing with health plans through the procedure of the joint Insurance Committee. On the other hand, on December 18, 1997, the evening before the teachers were to choose between the alternative health plans, Educators first sought to bargain the health plan within the framework of mediation.[41] Specifically, Educators made a proposal concerning the health plan. The School Corporation declined to agree to that proposal. See Findings and Conclusions of Fact 50, 51, and 52. However, at the mediation session, Educators did not insist that the parties deal with the health plan exclusively in negotiations. More important, on March 5,1997, Loveall told Educators the Anthem policy would expire on or about December 31, 1997. On December 19, 1997, as noted above, the teachers voted, pursuant to the past practice, on whether to change health plans. From March 5 through and including December 19, 1997, Educators did not insist at any time that the parties address the health plan solely in negotiations.

In Shenandoah School Corporation, the hearing examiner observed that it is possible for an exclusive teachers' organization to waive its statutory right to negotiate on any enumerated subject of bargaining. Therein, the hearing examiner stated: "[F]or there to be a waiver, the evidence must clearly support a finding that the exclusive representative had knowingly and unequivocally relinquished to the school employer its statutory privilege during the contract term." Id. at 130; *see also* Indianapolis Public Schools,[42]

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[41] The only negotiations proposal Educators made prior to December 18, 1997, regarding health insurance pertained not to the plan but to the School Corporation's contribution to pay the cost of the premiums for the teachers. That particular proposal requested the School Corporation to pay all but one dollar of each teacher's premium.

[42] The Shenandoah School Corporation case dealt with a situation wherein the school corporation relied on the affirmative defense of waiver by contract. On the other hand, in Indianapolis Public Schools, the school corporation argued that the exclusive teachers' organization had waived its right to complain that a certain mandatory subject had not been bargained. The school corporation based its argument on its allegation that the exclusive teachers' organization had acquiesced, through its conduct, in the school corporation's unilateral actions in regard to that particular bargainable subject. The hearing examiner therein aptly explained the concept of a waiver, which could arise when one party acquiesces in the conduct of the other party and thereby may voluntarily relinquish a known right. Specifically, the hearing examiner stated:

> The Respondent raises three basic theories of defense:
> (1) post-arbitral deferral,
> (2) latches and
> (3) acquiescence (a form of waiver of the right to bargain by a past practice of inaction).
>
> * * *
>
> We finally reach the acquiescence defense. This defense is intriguing and is related to a concept which has been referred to as the "dynamic status quo." *See* R.. Gorman, Labor Law, Ch. 20, § 13, p. 450 *et seq*. (1976). If, as was asserted in this case, an exclusive representative engages in a pattern or

U-79-8-5385,1979 IEERB Ann. Rep. 324,326-327 (1979), *aff'd*

by Board, 1981 IEERB Ann. Rep. 391 (1980).

Although Educators stated on December 11, 1997, that it wanted to bargain the health plan, Educators cooperated fully with the School Corporation throughout December, 1997, regarding the implementation of the past practice as it related to a teacher vote on the health plans on December 19. If Educators had actually wished to *conclusively address the health plan in negotiations*, Educators could have taken action that would have impressed that fact upon the School Corporation, which was fully aware that it had to bargain the health plan if Educators insisted on doing so.

For example, Educators could have refused to communicate with the School Corporation in December, 1997, regarding the health plan unless the parties took the matter to the bargaining table. Similarly, Educators could have:

(1) discontinued its participation in December, 1997, in the procedure of the joint Insurance Committee as it pertained to the health plan and

(2) requested again to bargain the health plan;

but, Educators did not pursue demonstrative conduct. Instead, Educators behaved in December, 1997, in the same manner in which it had behaved under the past practice in regard to all previous insurance plan issues. In other words, Educators continued to fully comply with the past practice in regard to whether the teachers wished to change health plans.

Therefore, since Educators acquiesced in the parties' past practice of dealing with health plans in the procedure of the joint Insurance committee and since Educators never insisted that the parties deal with the health plan exclusively in negotiations, Educators waived its right to successfully pursue a bargaining claim alleging that the School Corporation unilaterally changed the health plan. In Part 2 of Issue II, as a result of the above-described waiver by Educators, the School Corporation did not violate the Act and, thus, did not commit an unfair practice.

ISSUE II

Part 3

The question presented in Part 3 of Issue II is whether an act or omission of the School Corporation deprived Educators of the opportunity to exercise its contractual and/or statutory right

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> practice of acquiescing in unilateral actions of an employer, such a pattern of inaction can effectively waive the exclusive representative's right to bargain concerning the matters acquiesced in. The employer would be entitled to continue to act unilaterally unless and until the exclusive representative demanded to bargain with respect to the kinds of matters which had been subjected to unilateral action. In other words, the pattern or practice, until broken, would establish a waiver of the right to bargain certain matters.

Id. at 326-327.

to bargain the selection of the health plan. The previous discussion, regarding the applicability of three respective legal theories in Part 2 of Issue II, demonstrated that from a purely legal point of view, the implementation of a new teachers' health plan did not occur as a result of an illegal unilateral change made by the School Corporation. Instead, legally speaking, the implementation of the new health plan was occasioned by Educators' knowing and willing participation in a past practice *for the purpose of benefitting* Educators and its teachers.

As noted above, Educators' presentation in its case-in-chief and in its pre- and post-hearing briefs was not confined to the legal niceties addressed in Parts 1 and 2 of Issue 11. As a result, the previous legal discussion must be supplemented in an effort to reach an ultimate determination in Issue II which is supported by both the applicable law and a common sense analysis as to how and why the unusual factual situation presented in this case ever arose. For example, in most instances, an allegedly aggrieved complainant's prayer for relief does not seek the retention of the state of affairs between the parties which existed subsequent to the allegedly illegal conduct of the respondent.

Educators' case-in-chief is primarily premised on Educators' belief that the School Corporation worked an injustice on Educators by illegally preventing it, in its role as the exclusive teachers' organization, from actually bargaining (or "agreeing to") the selection of the health plan. In support of that argument, Educators makes three broad claims. First, Educators claims that herein "some [bidders] were selected out" by the School Corporation and that "[all potential insurance companies] weren't allowed to bid." Second, Educators claims that "[it] had kind of been put [by the School Corporation] into a position of having [its] back to the wall." Third, Educators expanded on that second claim, alleging that Educators had been subjected to a "tyranny of urgency."

As previously illustrated, Educators' primary argument in Part 3 of Issue II is that through certain acts and/or omissions, the School Corporation refused to bargain the health plan. Thus, a thorough factual analysis should determine whether such acts or omissions of the School Corporation did, indeed, prevent Educators from bargaining the health plan. The significant events in this case began as early as March, 1997, when Loveall and the two School Board members on the joint Insurance Committee realized -- from analyzing the School Corporation's earlier 1996-97 health insurance claims experience -- that the parties were probably headed toward a 1997-98 bargaining stalemate because the School Corporation's 1998 new money, which would be in the range of a 3% to 4% increase, would not be sufficient to finance both an anticipated 20% increase in the cost of the teachers' health insurance premiums and a meaningful teacher salary raise.

For this reason, Loveall endeavored to persuade Educators' members on the joint Insurance Committee to consider the merits of a partially self-insured plan. Additionally, Loveall encouraged Educators to consider higher deductibles and a higher stop loss amount for individual insureds on the existing fully-funded Anthem plan. Loveall's hope was that through the joint Insurance Committee, the parties could find another carrier which would offer benefits almost identical to those in the Anthem plan for approximately the same cost as the 1997 Anthem policy. If the joint Insurance Committee could do so, Loveall then intended to apply the savings, realized by the School

Corporation, to a meaningful teacher salary increase. To that end, the joint Insurance Committee met several times in the spring of 1997 so the members could learn how a partially self-insured plan would work.

The joint Insurance Committee did not meet again until October 28, 1997. The delay occurred because of the *modus operandi* of the public school insurance market. The School Corporation had no control over the manner in which the insurance industry conducted its business. As a result of the practices of the insurance industry, the School Corporation's solicitation of bids for the following year's insurance coverage and the joint Insurance Committee's decision as to which bid to accept was always a hurried procedure.

At that October 28, 1997, meeting, the parties by consensus authorized Terry Lothamer, a partner in the insurance firm which creatively and satisfactorily had handled the School Corporation's property and liability insurance for years, to solicit bids for: (1) a partially self-insured plan and (2) an Anthem plan with increased deductibles.

At that meeting, Loveall explained to the joint Insurance Committee that he needed Lothamer's assistance because he was unqualified to design and implement a partially self-insured plan. Implicit in Loveall's admission was that many school corporations are unwilling to participate in such complex insurance undertakings. This particular School Corporation was willing to do so for three reasons. First, Loveall had an unusual interest in and understanding of the potential for savings to the School Corporation, which could be realized under alternative health insurance delivery systems and which could then be allocated by the School Corporation to teacher salaries. Second, Loveall and the School Board were ultimately faced with a bargaining stalemate which they believed could only be resolved if the School Corporation could, through the use of a partially selfinsured plan, locate a plan of benefits almost identical to Anthem's and thereby free up School Corporation dollars which could then be used for a teacher pay raise. Third,-Loveall and the School Board members were confident that their attorneys and their experienced insurance firm could design and implement a successful partially self-insured plan. Lothamer had designed and implemented many such sophisticated plans in the past.

Shortly after the October 28, 1997, meeting, a long-time acquaintance of Loveall's, who had been in the school insurance business for many years, explained to Loveall that the School Corporation would be better served if it hired Lothamer to serve as an insurance consultant rather than as an insurance broker. Loveall heeded that advice and asked Lothamer to be a consultant. Lothamer agreed to do so and to charge the School Corporation a fee of $6,000, which was approximately 50% of what his commission as a broker would have been on the renewal of the Anthem policy.

A.

On December 11, 1997, Lothamer informed the joint Insurance Committee that any one of three specified carriers could provide the teachers with a plan of benefits which would be almost

identical to Anthem's. The only difference would be that the new PPO network would vary slightly from Anthem's.[43] Lothamer further informed the joint Insurance Committee that the cost of such a plan of benefits would be approximately equal to the cost of the 1997 Anthem policy.

Consequently, at the conclusion of Lothamer's presentation, the joint Insurance Committee would have known that if the parties changed to the recommended partially self-insured plan, savings in an amount equal to the cost of a 28% increase in the Anthem premiums would inure to the School Corporation. Since Loveall had already told Educators that the School Corporation would apply any such savings to increase teacher salaries, Educators would have also then known that Educators itself, pursuant to the long-established procedure of the joint Insurance Committee, could effect a meaningful salary increase while maintaining benefits almost identical to Anthem's[44] by accepting the joint Insurance Committee's recommended partially self-insured plan. Soon after the opening of the bids, the entire school community would have known that, under the joint Insurance Committee's recommendation, the teachers could now receive the two items which Educators had been seeking for months--that is, health benefits identical to Anthem's and a meaningful salary increase.

1.

Subsequent to Lothamer's presentation and during the joint Insurance Committee's deliberations, Educators asked to caucus. When Educators returned, President Larry Stevens told the School Corporation members of the joint Insurance Committee that Educators then wished to bargain the health plan. Because the existing Anthem policy was scheduled to expire in just 20 days, the School Corporation preferred not to begin bargaining the health plan at that late date. The School Corporation preferred to complete the parties' decision making on the recommended partially self-insured plan in accordance with the joint Insurance Committee's long-established procedure. More importantly, the School Corporation adamantly believed that the circumstances which then existed were such that the parties could finally resolve their bargaining impasse. Specifically, the School Corporation then knew that under a partially self-insured plan it finally could meet Educators' earlier demands of health benefits identical to Anthem's and a meaningful salary

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[43] Anthem had a proprietary interest in its PPO network. Thus, another insurance company could not simply use Anthem's PPO even though another company could form a competing PPO which included all but a very few of Anthem's service providers. Moreover, even Anthem's PPO is an ever changing work in progress as providers jump in and out of the Anthem PPO. The result is that in August of 2000, Anthem would be unable to replicate its own April, 2000 PPO.

[44] The new PPO would substitute one hospital for another and would not include a few Indianapolis physicians who were in Anthem's PPO. The benefits were otherwise identical. On the ballot it prepared for the teacher vote, Educators characterized the new health plan as "*the same*" as Anthem's. Educators did not even inform the teachers that there would be very slight differences in the new plan's PPO network. Thus, Educators obviously did not consider those few substitutions in the PPO to be of import to the teachers. Since Educators considered the benefits of the partially self-insured plan to be identical to Anthem's, the teachers' health benefits under the new plan will simply be referred to as "identical health benefits" or "health benefits identical to Anthem's" throughout the remainder of this discussion section.

increase. The School Corporation presumed that such an offer would evoke further negotiations which would lead to a settlement.

At no time during that December 11, 1997, meeting did Educators state that it wished to address the health plan exclusively in negotiations and that, therefore, Educators wished to discontinue its involvement in the parties' past practice in regard to the joint Insurance Committee's recommendation of a partially self-insured plan accompanied by a salary increase. In other words, during that meeting, Educators was careful to not preclude itself, and/or the teachers, from deciding to adopt the joint Insurance Committee's recommended plan and the salary increase which would accompany that plan.

2.

When that meeting adjourned, the parties had not agreed among themselves as to how they would deal with the joint Insurance Committee's recommendation concerning a partially self-insured plan. Clearly, Educators wanted to bargain the health plan. On the other hand, Educators' had not ruled out obtaining input under the past practice from the teachers as to whether they wished to change to a partially self-insured plan accompanied by a salary increase. Conversely, the School Corporation preferred to have Educators acquire the teachers' input on the joint Insurance Committee's recommended plan and on the salary increase which would accompany the plan. However, the School Corporation was completely aware that if Educators insisted on addressing the health plan exclusively in negotiations, the School Corporation had an unequivocal obligation to do so.

B.

Further review and analysis of this case will demonstrate conclusively that the *factual situation* within which the parties conducted their affairs from December 11, 1997, through January 22, 1998, *effectively prevented* Educators from insisting that the School Corporation address the health insurance issue exclusively in negotiations. That factual situation was comprised of facts which arose not from illegal School Corporation conduct but rather of facts which arose as a result of:

(1) decisions made jointly by the parties;
(2) decisions made solely by Educators;
(3) decisions made solely by third parties; and/or
(4) decisions (acts and/or omissions) made by the School Corporation which were in compliance with the Act.

As the factual situation is further delineated, one will observe that certain facts unrelated to the School Corporation's conduct affected Educators' decision to follow the parties' past practice and to also permit the teachers to vote pursuant to Educators' By-Laws on whether to change to a new health plan which would be accompanied by a meaningful salary increase.

C.

As noted above, soon after the December 11, 1997, meeting, everyone in the school community would have been aware of the joint Insurance Committee's recommended health plan.

For example, the teachers would have known that under the joint Insurance Committee's recommended partially self-insured plan the School Corporation could provide them benefits identical to Anthem's and could, simultaneously, offer them a meaningful salary increase. Second, the teachers would have known that under the joint Insurance Committee's recommended partially self-insured plan they would not have to pay their 22-1/2% portion of the cost of the 28% increase in Anthem's premiums. Third, they would have known that if the School Corporation extended the Anthem policy beyond its December 31, 1997, expiration date, the teachers' salary increase would be reduced by whatever amount the School Corporation expended to pay the cost of the 28% increase in the Anthem premiums for the duration of the extension. The minimum period for which an Anthem policy could be extended was two months. Fourth, the teachers would have known that if the Anthem policy were extended, they would have to pay their 22-1/2% portion of the cost of the increase in the premium for the duration of the extension.

1.

Because of the understanding the teachers would have had about the joint Insurance Committee's recommended plan and its accompanying a salary increase and about the two disadvantageous occurrences listed above concerning the Anthem policy's extension, Educators would have had to then choose between two equally unacceptable courses of action. First, Educators could follow the past practice by presenting the joint Insurance Committee's recommended partially self-insured plan, accompanied by a salary increase, to the teachers for a vote. Alternatively, Educators could explain to the teachers:

(1) That, pursuant to Article VIII, Section 2 of its By-Laws, Educators' officials had decided not to present to the teachers the question of whether to accept or reject the joint Insurance Committee's recommended plan, which would be accompanied by a salary increase, and

(2) That, instead, a few of Educators' officials would, in the future, resume negotiating over the Anthem policy, which would be accompanied by a 28% premium increase.

Therefore, prior to determining which course of action to take, Educators would have had to consider whether the teachers might respond adversely to a decision by Educators to abandon the joint Insurance Committee's past practice and to, thus, forego any union consideration of the joint Insurance Committee's recommended health plan and of the salary increase which would accompany that plan.

2.

Similarly, the School Corporation did not immediately know what course of action to take. Nevertheless, four facts existed which ultimately dictated the nature of the School Corporation's future conduct. The School Corporation knew that if Educators insisted on dealing with the health plan exclusively in negotiations, the School Corporation had an obligation to do so. However, at that time, Educators had not insisted on addressing the health plan exclusively in negotiations. Additionally, the School Corporation knew it could then finally meet Educators' two bargaining demands:

(1) health benefits identical to Anthem's and

(2) a meaningful salary increase.

However, the School Corporation could meet those two demands only if it could provide health care coverage to the teachers through a system of partial self insurance.

At that point, each party pursued its primary goal within the context of the potential implementation of the partially self-insured plan, which would be accompanied by a salary increase, and of Educators' request to bargain the health plan. The existence of those new facts dissuaded each party from pursuing what would have been its normal course of action. In the case of Educators, it continued pursuing its goal of negotiating the health plan. However, Educators did so without abandoning the joint Insurance Committee's past practice because its two previouslyarticulated demands, identical health benefits and a meaningful salary increase, could be achieved through the joint Insurance Committee's recommendation.

In the case of the School Corporation, it pursued its goal of having the recommended plan, accompanied by a salary increase, presented to the teachers through the joint Insurance Committee's past practice. The School Corporation did so even though it knew it must immediately discontinue such conduct if Educators demanded that the health plan be addressed exclusively in negotiations. To assure that it did not inadvertently commit a refusal to bargain unfair practice, the School Corporation continued to meet with Educators for negotiations, even though Educators did not insist that negotiations be the exclusive forum for the parties' decision making on the health plan. In other words, from December 11 through December 19, 1997, the parties' previously clear distinction between their bargaining activities and their joint Insurance Committee activities became a bit blurred because they pursued both activities simultaneously in regard to the health plan.

Specifically, the parties continued the joint Insurance Committee's past practice as it pertained to the recommended health plan and again considered the renewal of the Anthem policy in negotiations. Accordingly, from December 11 through 19, 1997, Loveall spoke on numerous occasions with President Stevens and with O'Rourke, who was on both Educators' negotiations committee and its insurance committee, as to when the teachers would vote on whether to switch to the recommended partially self-insured plan, which would be accompanied by a salary increase. Initially, Loveall and O'Rourke believed that Educators would conduct the vote on or before Tuesday, December 16, 1997, so that the School Board could vote that night at its regularly scheduled meeting to adopt and implement the teachers' wishes, regardless of whether they voted to retain the Anthem policy or to change to the new plan.

When the results of the teacher vote were not available on December 16, 1997, Loveall scheduled a special School Board meeting to be held in the evening on Friday, December 19, 1997, to adopt and implement the teachers' decision. Pursuant to O'Rourke's agreement with Loveall, Educators conducted the vote during the school day on December 19, 1997. After school that afternoon, Stevens reported to Loveall that the teachers had voted to change to the partially selfinsured plan, which would be accompanied by a salary increase. That evening, the School Board adopted the teachers' decision and directed Loveall to implement that decision.

Although the parties addressed the health plan exclusively through the procedure of the joint Insurance Committee from March 5 through December 17, 1997, they augmented those activities

with brief and qualified negotiations on the health plan at a December 18, 1997, mediation session. Specifically, Educators again proposed that the School Corporation renew the Anthem policy.[45] In accordance with Sections 3, 4, and 2(n) of the Act, the School Corporation declined to agree to that proposal.

D.

In Parts 2 and 3 of Issue II, Educators advances two principal allegations charging that the School Corporation's conduct violated the Act and thereby constituted an unfair practice. In its first principal allegation, Educators charges that the School Corporation's alleged illegal conduct forced Educators to prematurely participate in deciding whether the parties should switch health plans. In its second principal allegation, Educators charges that the School Corporation's alleged illegal conduct precluded Educators -- as the statutory entity charged with decision making on behalf of the teachers -- from determining, through negotiations, whether to "agree to" (or, perhaps, not "agree to") the change from one health plan to another.

1.

In regard to the first principal allegation, Educators claims that the School Corporation:

(1) did not solicit bids in a timely manner (and, thus, occasioned a needlessly hasty procedure of procuring the health coverage for 1998);
(2) failed to allow Educators to participate in the selection of the School Corporation's insurance consultant;
(3) failed to obtain sufficient bids regarding a stop loss carrier;
(4) failed to provide Educators sufficient time to review and evaluate the bids which were received; and
(5) failed to extend the December 31, 1997, expiration date of the Anthem policy.

Then, based on those claims, Educators argues that the School Corporation's conduct violated the Act by forcing Educators to prematurely participate in deciding whether the parties should switch health plans.

However, a review of the findings in this case demonstrates that several of those specific claims by Educators are not supported by the evidence. For example, the usual and customary practice in the public school health insurance business over which the School Corporation had no control necessitated the hurried procedure for procuring health coverage for 1998. As previously explained, the School Corporation has no legal authority, under the General School Powers Act, IC 20-5-2-2(7), to employ an insurance consultant to represent, at least in part, the interests of Educators. In other words, the School Corporation can only hire professionals who will represent exclusively the interests of the School Corporation.

The School Corporation did not extend the expiration date of the Anthem policy because

[45] Educators relied on the timing of the Christmas vacation, which was to begin on Friday, December 19, 1997, and the December 31, 1997, expiration date of the Anthem policy to hopefully persuade the School Corporation to act affirmatively, at that particular time, on Educators' bargaining proposal concerning the Anthem policy. Also noteworthy was that the School Corporation similarly relied on the same timing of events to obtain an affirmative teacher vote to make a change in health plans which would become effective on January 1, 1998.

Educators did not request the School Corporation to do so. In the previous instances wherein Educators asked the School Corporation to extend an existing policy's expiration date, the School Corporation did so. No evidence was adduced to show that the School Corporation would not have extended the Anthem policy's expiration date if Educators had asked the School Corporation to do so.[46]

2.

On the other hand, three other findings perhaps explain why Educators did not ask the School Corporation to extend that expiration date. The School Corporation would have had to extend the policy for a minimum of two months. The teachers' potential salary increase would have been reduced by the amount the School Corporation expended on the 28% increase in the cost of the Anthem premium during the extension of the policy. Additionally, the teachers would have had to pay their 22-1/2% portion of the increase in the cost of the Anthem premium during such an extension.

3.

If Educators had, indeed, desired to be afforded additional time within which to obtain more bids and within which to further evaluate the available health plans, all Educators needed to do was to ask Loveall to extend the existing policy. The only credible evidence on whether the School Corporation forced Educators to vote on December 19, 1997, was the testimony adduced from Stevens. His initial testimony indicated that he *knew* the School Corporation was going to insist on Educators conducting a teacher vote on December 19, 1997. Stevens' further testimony shows he understood that immediate action had to be taken by the School Corporation to assure that the teachers would continue to have health coverage subsequent to the policy's expiration date on December 31, 1997, and prior to their return to school on approximately January 4, 1998. Then, based on his understanding of the need for such immediate School Corporation action of some type such as switching to a new health plan, extending the Anthem policy, or renewing the Anthem policy, Stevens incorrectly inferred that Loveall was going to insist on a December 19, 1997, vote on the recommended plan. In other words, Stevens ignored the evidence showing that in the past, when Educators had asked the School Corporation to extend an existing health policy, the School Corporation had done so. Stevens simply inappropriately assumed Loveall would not extend the policy if asked.

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[46] At the hearing, Dennis O'Rourke gave testimony concerning whether the teachers had adequate time within which to consider their 1998 health insurance options. Specifically, he stated:

> I really felt pressured for the teachers, and for myself, and for the fact that everybody was going on Christmas break; we had to get this done in no time, and I just didn't think it was right for all that pressure to be put on us for something this big.
>
> * * *
>
> ... I think we were pressured into making and doing stuff at the last minute, and that's not the way it ought to be.

In view of the events which occurred between December 11 and December 19, 1997, that testimony given by O'Rourke is clearly not credible.

Thus, regarding Educators' first principal allegation in Parts 2 and 3 of Issue II, one must conclude that if Educators did have to prematurely make a determination on the health plan, that premature determination was not occasioned by the School Corporation's conduct. Instead, any such premature determination by Educators occurred because Educators did not ask the School Corporation to extend the Anthem policy. In all probability, Educators' decision to not have the Anthem policy extended occurred because Educators did not wish to explain to the teachers: (1) why it would have been necessary to extend the Anthem policy and thereby reduce the teachers salary increases and (2) why it would have been necessary to increase the cost of the teachers' contributions to the health premiums.

E.

In regard to its second principal allegation, Educators charges that the School Corporation precluded Educators itself from deciding through negotiations whether to switch health plans. The findings belie Educators' allegation. Educators did ask the School Corporation on December 11, 1997, to bargain the health plan. On the other hand, the findings also show that the School Corporation was fully aware it had an obligation to bargain any change in the health plan and that it would have done so if Educators had insisted that the parties address the health plan exclusively in negotiations. However, Educators did not so insist on such negotiations.

Instead, Educators continued its activity in the long-established procedure of the joint Insurance Committee in regard to the recommended health plan and in regard to the salary increase which would accompany that plan. Additionally, Educators and the School Corporation simultaneously discussed the health plan briefly on December 18, 1997, in mediation; but, during mediation that night, Educators did not insist that the health plan be addressed exclusively in the bargaining process.

1.

Furthermore, the findings show that for many years, pursuant to the past practice of the joint Insurance Committee, the Teachers' Organization (including Educators) and the teachers had benefited from many recommended changes, which the Teachers' Organization and/or the teachers had decided they wanted in insurance plans. Such decisions on changes in the insurance plans were made solely through the Teachers' Organizations' internal procedures. After the Teachers' Organization through its *internal* procedures decided whether to accept or reject any given joint Insurance Committee recommendation, the Teachers' Organization then communicated its decision to the School Corporation for implementation.[47] However, from 1995 through 1998 and pursuant

[47] For example, during Secttor's tenure from 1988 to 1994, the School Corporation had no knowledge as to what internal procedures the Teachers' Organization utilized to make such decisions which were then communicated to Secttor by a leader of the Teachers' Organization.

to Article II, Section 3 and Article VIII, Section 2 of its By-Laws, Educators had engaged in the practice of acquiring teacher input on almost all joint Insurance Committee recommendations by submitting such recommendations to the teachers for a vote. As a result, in recent years the teachers had come to expect that officials of Educators would permit them to vote on any recommended change in an insurance plan.

2.

In view of the findings and the discussion above, Educators could have negotiated that health plan at any time from December 11 through 19, 1997, by simply informing the School Corporation that it wished to deal with the health plan exclusively in negotiations. However, by insisting on such negotiations, Educators would have prevented the teachers from voting on whether to accept or reject the joint Insurance Committee's recommended health plan, accompanied by a salary increase. Furthermore, if Educators had insisted on such negotiations, the School Corporation would have had to extend the Anthem policy.

F.

Thus, it was not the action of the School Corporation which stopped Educators from exercising its right to bargain the health plan. Instead, Educators' failure to bargain the health plan was occasioned by the then-existing factual situation under which Educators chose not to insist on addressing the health plan exclusively in negotiations:

Educators' potential exercise of its right to insist on bargaining the health plan would have had several undesirable concomitant effects. Because of Educators' previous conduct, the teachers had an expectation that Educators' officials would permit them to vote on whether to change the health plan, on whether to receive a salary raise, on whether to have their salary increase reduced by an extension of the Anthem policy, and on whether to avoid paying the individual teacher's share of the Anthem premium increase. Thus, the officials of Educators would have had to explain to the teachers:

(1) why Educators was abandoning the parties' past practice in regard to the joint Insurance Committee;

(2) why the officials of Educators were reversing Educators' established internal practice *of encouraging teacher participation in union decision making*, pursuant to Article II, Section 3 and Article VIII, Section 2 of its By-Laws; and

(3) why a few negotiators and officers of Educators preferred to pursue further *protracted* negotiations on the Anthem policy and on a *possible* salary increase at some later date.

Furthermore, if Educators had insisted on addressing the health plan exclusively in negotiations, Educators would have had to explain also to the teachers why they would then have to pay their share of the Anthem premium increase. In sum, after evaluating the potential intensity with which the teachers might adversely respond to not having their expectation of voting fulfilled, Educators chose to follow the parties' past practice and to also allow the teachers to make the decision as to whether to change from the Anthem plan to a partially selfinsured plan.

The analysis above is further supported by a review of Educators' Complaint and the essence

of its case-in-chief. Under the Complaint, Educators herein wishes to reap the unusual teacher benefits arising from the parties' unique and long-established practice of relegating all decisions on insurance plans to the procedures of the joint Insurance Committee. However, the essence of Educators' case-in-chief is based on an incorrect assumption. Educators was pleased with the salary increase, which arose solely as a result of the unusual, long-established proceedings under the joint Insurance Committee and which was to be funded from the savings arising under the partially selfinsured plan. On the other hand, Educators appears to genuinely believe that after receiving the salary increase, which the School Corporation was able to pay for only because it did not incur the Anthem premium increase, Educators should have then been allowed to force the School Corporation to continue bargaining over the Anthem policy and over its accompanying 28% increase in the cost of its premiums.

Finally, Educators vigorously argues that the School Corporation somehow worked an injustice on Educators as a result of Educators' conducting under its By-Laws and under the longestablished procedure of the joint Insurance Committee a teacher vote through which the new insurance plan was initially adopted by the teachers. Incidentally, Educators later tentatively agreed to that new plan, and the teachers then ratified that new plan.

Nonetheless, Educators' Complaint, which assumes that the School Corporation, in fact, worked such an injustice on Educators, seeks to now retain the state of affairs between the parties which existed subsequent to the occurrence of that purported injustice. In an instance wherein an allegedly substantial injustice occurred, the Complainant's decision to seek no truly meaningful relief is consistent with the discussion and analysis in this report which concludes that no illegal act or omission of the School Corporation caused the dilemma about which Educators now complains. As noted above, that dilemma arose as a result of the existence between December 11 and December 19, 1997, of an unusually unique combination of facts under which Educators chose not to exercise its right to address the health plan issue exclusively in negotiations. In Part 3 of Issue II, the School Corporation did not violate the Act and, thus, did not commit an unfair practice.

In conclusion, the School Corporation did not fail to bargain in good faith at the table. Second, the School Corporation did not violate an alleged contractual obligation to bargain the carrier. Third, the School Corporation did not unilaterally change the health plan because Educators knowingly and willingly participated in the implementation of the past practice of the joint Insurance Committee for the benefit of Educators and its teachers. Fourth, the School Corporation, through its acts and/or omissions, did not deprive Educators of its right to bargain the health plan. In short, no violation of the Act occurred in either Issue I or in Issue II. Thus, the School Corporation did not commit an unfair practice in this case.

CONCLUSIONS OF LAW

1. The Indiana Education Employment Relations Board has jurisdiction over the parties and the subject matter herein.

2. In Issue I, the School Corporation's conduct, when viewed in its totality, constituted good faith bargaining at the table. In Issue I, the School Corporation's conduct did not violate Sections 7(a)(5) and 7(a)(6) of the Act and, thus, did not commit an unfair practice.

3. In Part 1 of Issue II, the evidence unequivocally shows that under the past practice Educators itself, as the exclusive teachers' organization, was afforded the opportunity to accept or reject American United as the stop loss carrier. Since Educators was afforded the opportunity by the joint Insurance Committee and by the School Corporation to accept or reject the stop loss carrier, determining herein whether the School Corporation had a contractual obligation to bargain the carrier is unnecessary. That Educators declined to exercise its alleged right to "agree on" (or not "agree on") American United as the stop loss carrier is not relevant to the outcome in this case. In Part 1 of Issue II, the School Corporation did not violate Sections 7(a)(5) and 7(a)(6) of the Act and, thus, did not commit an unfair practice.

4. In Part 2 of Issue II, the School Corporation raised the legal concept of past practice as a defense. This Conclusion of Law addresses the applicability of that defense herein. Subsequent to Educators' request to purportedly engage in meaningful and conclusive negotiations about the health plan, the School Corporation carefully and continuously evaluated Educators' conduct and then responded accordingly. When Educators ceaselessly adhered to the past practice rather than exclusively pursuing alternative conduct, the School Corporation continued its participation in the past practice in reliance on Educators actual conduct. In Part 2 of Issue II, under the concept of past practice, the School Corporation did not violate Sections 7(a)(5) and 7(a)(6) of the Act and, thus, did not commit an unfair practice.

5. In Part 2 of Issue II, the School Corporation raised the doctrine of equitable estoppel as a defense. This Conclusion of Law addresses the applicability herein of that defense. In this case, in reliance on Educators' communication to the School Corporation that the teachers had voted to change health plans, the School Board unanimously adopted the teachers' decision to change plans and directed the superintendent to implement that change. Since the School Corporation relied on Educators' representation that the teachers wished to change health plans, Educators is estopped from prevailing on its claim alleging that the School Corporation unilaterally changed the teachers' health plan. In Part 2 of Issue II, under the doctrine of equitable estoppel, the School Corporation did not violate Sections 7(a)(5) and 7(a)(6) of the Act and, thus, did not commit an unfair practice.

6. In Part 2 of Issue II, the School Corporation raised the doctrine of waiver as a defense. This Conclusion of Law addresses the applicability herein of that defense. In this case, Educators could have demonstrated to the School Corporation that Educators unequivocally wished to deal with the health plan exclusively in negotiations. Educators did not choose to do so. Instead, Educators continued to follow the procedure of the joint Insurance Committee while merely alleging it wished to negotiate.

   Since Educators acquiesced in the parties' past practice of dealing with the health plan in the procedure of the joint Insurance Committee and since Educators never insisted that the parties deal

with the health plan exclusively in negotiations, Educators waived its right to successfully pursue a bargaining claim alleging that the School Corporation unilaterally changed the health plan. In Part 2 of Issue II, as a result of the above-described waiver by Educators, the School Corporation did not violate Sections 7(a)(5) and 7(a)(6) of the Act and, thus, did not commit an unfair practice.

7. In Part 3 of Issue II, although Educators assumes that the School Corporation, in fact, worked an injustice on the exclusive teachers' organization, Educators nonetheless seeks now to retain the state of affairs between the parties which existed subsequent to the occurrence of that purported injustice. In an instance wherein an allegedly substantial injustice occurred, the Complainant's decision to seek no truly meaningful relief is consistent with the decision and analysis in this report which concludes that no illegal act or omission of the School Corporation caused the dilemma about which Educators now complains. That dilemma arose as a result of *the existence between December 11 and December 19, 1997, of an unusually unique combination of facts* under which Educators chose not to exercise its right to address the health plan issue exclusively in negotiations. In Part 3 of Issue II, the School Corporation did not violate Sections 7(a)(5) and 7(a)(6) of the Act and, thus, did not commit an unfair practice.

RECOMMENDED ORDER

This Complaint for Unfair Practice is dismissed in its entirety.

Pursuant to the Rules of the Indiana Education Employment Relations Board, and specifically Rule 560 IAC 2-3-21(a), this case is transferred to the Indiana Education Employment Relations Board.

To preserve an objection to the Hearing Examiner's Report, a party must object to the Report in a writing that identifies the basis of the objection with reasonable particularity. Such writing must be filed with the Indiana Education Employment Relations Board within fifteen (15) days after the Report is served on the petitioning party. *See* I.C. 4-21.5-3-29(c) and (d); 560 IAC 2-3-22 and 23.

Dated this 31st day of March, 2000.

Ivan Floyd, Hearing Examiner

BEFORE THE INDIANA EDUCATION EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:

CHRIS L. GOODWIN,	)	
	)	
Complainant,	)	
	)	
and	)	Case No. U-98-02-1910
	)	
BOARD OF SCHOOL TRUSTEES OF THE MOUNT PLEASANT TOWNSHIP COMMUNITY SCHOOL CORPORATION,	)	
	)	
Respondent.	)	

BOARD ORDER

On July 19, 2000, the Complainant's administrative appeal of eight findings of fact in the Hearing Examiner's Report in the above-captioned unfair practice proceeding was heard by the Indiana Education Employment Relations Board. Having considered the Hearing Examiner's Report, the Complainant's exceptions thereto, the Respondent's brief in opposition to exceptions, and the oral arguments of the parties, the Board now AFFIRMS that Report in its entirety.

Dated this 19th day of July, 2000.

Dennis P. Neary, Chairman

John E. Lillich, Member

William E. Wendling, Jr., Member

2000 SUPPLEMENT TO
CUMULATIVE INDEX TO UNIT DETERMINATION
AND REPRESENTATION DECISIONS*

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* The cumulative indexes and case histories can be found on the internet at www.IN.gov/ieerb/alllndex99. They also may be purchased from the IEERB.

2000 SUPPLEMENT TO
CUMULATIVE INDEX TO UNIT DETERMINATION
AND REPRESENTATION DECISIONS

* IEERB acknowledgment of an agreed composition of a unit.

*** IEERB acknowledgment of an agreed composition of a unit and a voluntary recognition of an exclusive representative.

2000 SUPPLEMENT TO
IEERB UNIT DETERMINATION AND
REPRESENTATION CASE HISTORIES

UNIT DETERMINATION or REPRESENTATION CASE	ANNUAL REPORT	PAGE (Forum)
Fayette County, R-00-02-2395	00	15 (HO)
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** New Category

* The cumulative indexes and case histories can be found on the internet at www.IN.gov/ieerb/alllndex99. They also may be purchased from the IEERB.

2000 SUPPLEMENT TO
CUMULATIVE INDEX TO
UNFAIR PRACTICE DECISIONS

2000 SUPPLEMENT TO
IEERB UNFAIR PRACTICE CASE HISTORIES

(All IEERB unfair practice cases which have appeared in the Annual Reports - also includes citations to appellate court cases)

UNFAIR PRACTICE CASE	ANNUAL REPORT	PAGE (Forum)
Mt. Pleasant, U-98-02-1910	00 00	34 (HE) 85 (Bd)

OTHER APPELLATE CASES

In addition to the representation, unit determination, and unfair practice cases shown in the IEERB Case Histories, the following appellate cases have interpreted or are related to the Certificated Educational Employee Bargaining Act (Indiana Code 20-7.5-1):

Anderson, 416 N.E.2d 1327 (Ind. App. 1981).

Blackford Co., F-84-03-0515, 519 N.E.2d 169 (Ind. App. 1988).*

Blackford Co., 531 N.E.2d 1182 (Ind. App. 1988).

Caston, 688 N.E.2d 1315 (Ind. App. 1997).

Crawford County, 734 N.E.2d 685 (Ind. App. 2000).

DeKalb Co. Eastern, 513 N.E.2d 189 (Ind. App. 1987).

East Allen, 683 N.E.2d 1355 (Ind. App. 1997).

East Chicago, 422 N.E.2d 656 (Ind. App. 1981).

East Chicago, 622 N.E.2d 166 (Ind. App. 1993).

Eastbrook, 566 N.E.2d 63 (Ind. App. 1990).

Fort Wayne, 443 N.E.2d 364 (Ind. App. 1982).

Fort Wayne, 527 N.E.2d 201 (Ind. App. 1988).

Fort Wayne, 569 N.E.2d 672 (Ind. App. 1991).

Fort Wayne, 585 N.E.2d 6 (Ind. App. 1992).

Fort Wayne, 977 F.2d 358 (7th Cir. 1992).

Gary, 332 N.E.2d 256 (Ind. App. 1975).

Gary, 512 N.E.2d 205 (Ind. App. 1987).

Hamilton Heights, 560 N.E.2d 102 (Ind. App. 1990).

Indianapolis, 585 N.E.2d 666 (Ind. App. 1992).

Indianapolis, 679 N.E.2d 933 (Ind. App. 1988).

Jay, 527 N.E.2d 715 (Ind. App. 1988).

John Glenn, 656 N.E.2d 864 (Ind. App. 1995).

Linton-Stockton, 686 N.E.2d 143 (Ind. App. 1997).

Madison-Grant, 675 N.E.2d 734 (Ind. App. 1997).

Marion, 721 N.E.2d 280 (Ind. App. 1999).

Michigan City, 577 N.E.2d 1004 (Ind. App. 1991).

Monroe Co.,434 N.E.2d 93 (Ind. App. 1982).

Monroe Co.,489 N.E.2d 533 (Ind. App. 1986).

Mt. Pleasant, 677 N.E.2d 540 (Ind. App. 1997).

New Albany-Floyd Co., 724 N.E.2d 251 (Ind. App. 2000).

New Prairie, 460 N.E.2d 149 (Ind. App. 1983).

New Prairie, 487 N.E.2d 1324 (Ind. App. 1986).

North Miami, F-84-17-5620, 500 N.E.2d 1288 (Ind. App. Memo. Dec. 1986).*

North Miami, 736 N.E.2d 749 (Ind. App. 2000).

Perry Twp.,459 U.S. 37 (U.S. Sup. Ct. 1983).

Portage Twp., 567 N.E. 2d 851 (Ind. App. 1991).

Prairie Heights, 585 N.E.2d 289 (Ind. App. 1992).

Rockville, 659 N.E.2d 174 (Ind. App. 1995).

South Bend, 444 N.E.2d 348 (Ind. App. 1983).

South Bend, 531 N.E.2d 1178 (Ind. App. 1988).

South Bend, 655 N.E.2d 516 (Ind. App. 1995).

South Bend, 657 N.E.2d 1236 (Ind. App. 1995).

Tippecanoe, 429 N.E.2d 967 (Ind. App. 1981).

West Noble, 398 N.E.2d 1372 (Ind. App. 1980).

Whitley Co.,718 N.E.2d 1181 (Ind. App. 1999).

*Cases in which the IEERB was a party.